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AUG 2006
U.S. MAGISTRATE JUDGE
DISTRICT OF NEVADA

BY _____ DEPUT

9 Admitted *Pro Hac Vice* in related Federal Court Case No. 3:06-CV-0056-BES-VPC

10 **UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT COURT OF NEVADA**

12 IN THE MATTER OF THE SEARCH OF:

13 The Residence Located at 12720 Buckthorne
Lane, Reno, NV and Storage Units 136, 140, 141,
14 142, and 143, Double R Storage, 888 Maestro
Drive, Reno, Nevada

15 Case No. 3:06-MJ-0023-VPC

16 /
17 **DECLARATION OF JERRY SNYDER**

18 I, Jerry M. Snyder, declare under penalty of perjury under the laws of the State of Nevada:

19 1. I am an attorney duly licensed to practice in the State of Nevada and am an associate
20 with the law firm of Hale Lane Peek Dennison and Howard. I represent eTreppid Technologies,
21 L.L.C. ("eTreppid") and Warren Trepp ("Trepp") in the above-captioned matter. I have personal
22 knowledge of and, if called, could competently testify as to the matters contained herein.

23 2. On February 1, 2006, eTreppid filed its First Amended Complaint in the Second
24 Judicial District Court in and for Washoe County, alleging causes of action against Dennis
25 Montgomery, *et. al.* for misappropriation of trade secrets, breach of contract, conversion, breach of
26 fiduciary duty, bad faith – tortious and contractual, declaratory relief, and intentional interference with
27 contract.

28 3. On February 7, 2006, Judge Perry conducted an extensive evidentiary hearing on

1 eTreppid's Motion for a Preliminary Injunction. A true and correct copy of the transcript of this
2 hearing is attached hereto as **Exhibit 1**. Notably, Judge Perry ordered at this hearing that the transcript
3 be kept under seal. Ex. 1, 18:14 to 19:11.

4 4. On February 8, 2006, Judge Perry entered an Order granting eTreppid's request for a
5 preliminary injunction. A true and correct copy of this Order is attached hereto as **Exhibit 2**.

6 5. On May 11, 2006, this Court heard eTreppid's motion for a protective order in the civil
7 action that Montgomery brought against eTreppid. This court did not grant eTreppid's motion, but
8 instead suggested that the parties attempt to resolve any concerns by agreeing to a stipulated protective
9 order. At that time, this Court provided counsel for both parties with a sample two-tiered protective
10 order. Consequently, on that same day, eTreppid provided counsel for Montgomery with a draft
11 protective order based in large part on the sample provided by the Court. A copy of this draft
12 protective order, as well as the correspondence enclosing the draft, is attached hereto as **Exhibit 3**.
13 Montgomery subsequently provided the draft protective order that he attached to his Application to
14 Enforce Subpoena.

15 6. On July 26, 2006, Montgomery provided counsel for eTreppid with a list of documents
16 that Montgomery believed eTreppid was obliged to provide through its Rule 26(f) initial disclosures.
17 In this same letter, Montgomery confirmed the parties' agreement that each side would make initial
18 disclosures on August 7, 2006. A true and correct copy of this letter is attached hereto as **Exhibit 4**.

19 7. On August 7, 2006, eTreppid provided Montgomery with its initial disclosures,
20 identifying approximately 750 pages of relevant documents. A true and correct copy of this index of
21 documents identified is attached hereto as **Exhibit 5**.

22 8. On July 24, 2006, Montgomery sent eTreppid a letter to demand, as a "member" of
23 eTreppid, that he be allowed to inspect and copy a wide variety of business records. A true and correct
24 copy of this letter is attached hereto as **Exhibit 6**. eTreppid responded that Montgomery would be
25 allowed to inspect those records to which he is entitled under NRS 86.241, but only upon reasonable
26 notice and upon Montgomery's written agreement to maintain the confidentiality of those documents.
27 A true and correct copy of this letter is attached hereto as **Exhibit 7**.

28 9. Montgomery apparently attempted to serve the subpoena at issue here on eTreppid on

1 July 27, 2006. A true and correct copy of this subpoena, together with a proof of service, is attached
2 hereto as **Exhibit 8**. Montgomery apparently attempted to serve the subpoena by delivering it to a
3 residential address at 2080 McCloud Avenue, Reno, Nevada, an address which has no apparent
4 connection to eTreppid. Montgomery further attempted service by delivering a copy to me. I
5 informed the process server, as well as counsel for Montgomery, that I was not authorized to accept
6 service of process on behalf of eTreppid.

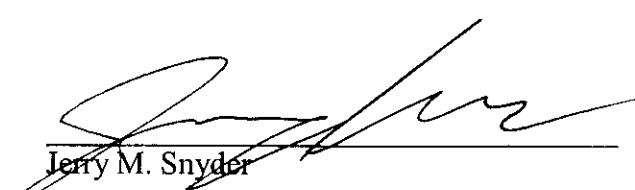
7 10. Even though eTreppid was never served with the present subpoena, it obtained a copy
8 of the document and, on July 28, 2006, notified Montgomery of its objections. I also hand-delivered a
9 copy of its objections to Montgomery's counsel on July 31, 2006 immediately prior to the hearing on
10 this matter. A true and correct copy of this letter is attached hereto as **Exhibit 9**.

11 11. Even though Montgomery apparently filed the present motion on July 30, 2006,
12 eTreppid was unaware of Montgomery's *Ex Parte* Application to Enforce Trial Subpoena (the
13 "Application to Enforce") until August 2, 2006, when the Court granted Montgomery's *Ex Parte*
14 Application for an Order Shortening Time. After receipt of this order, I immediately contacted
15 counsel for Montgomery to request a copy of the Application to Enforce. Montgomery's counsel
16 Michael Flynn promised to provide me a copy, but did not. Instead, on August 4, Montgomery's
17 counsel informed eTreppid that because the matter was sealed, they would not provide eTreppid with a
18 copy of the Application to Enforce absent notification from the Court that eTreppid could review it. A
19 true and correct copy of this letter is attached hereto as **Exhibit 10**.

20 12. Attached hereto as **Exhibit 11** is a true and correct copy of a letter from Michael Flynn
21 to me dated July 27, 2006.

22 DATED: This 9th day of August, 2006.

23
24 Jerry M. Snyder
25
26
27
28



PROOF OF SERVICE

I, Paul D. Cain, declare:

I am employed in the **City of Reno, County of Washoe, State of Nevada**, by the law offices of Hale Lane Peek Dennison and Howard. My business address is: **5441 Kietzke Lane, Second Floor, Reno, Nevada 89511**. I am over the age of 18 years and not a party to this action

I am readily familiar with Hale Lane Peek Dennison and Howard's practice for collection of mail, delivery of its hand-deliveries, and its process of faxes.

On August 9, 2006, I caused the foregoing **DECLARATION OF JERRY SNYDER** to be delivered:

X by hand-delivering a true copy thereof in a sealed envelope, addressed as follows:

Ronald J. Logar, Esq.

Eric A. Pulver, Esq.

The Law Offices of Logar & Pulver
225 S. Arlington Avenue, Suite A
Reno, NV 89501

Michael J. Flynn, Esq.

Michael J. Flynn, Esq.
Philip H. Stillman, Esq.

Philip H. Stillman
Flynn & Stillman

Flynn & Strimlan
224 Birmingham Dr., Ste. 1A4
Cardiff, CA 92007

Cardiff, CA 92007

X by hand-delivering the original opposition to chambers (400 South Virginia Street, Room 404, Reno, Nevada 89501) per Judge Cooke's August 2, 2006 instructions

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on August 9, 2006.

Paul D. C.

Paul D. Cain

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5 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7 BEFORE THE HONORABLE ROBERT H. PERRY, DISTRICT JUDGE
8 -000-
9 ETREPPID TECHNOLOGIES, L.L.C., a
Nevada Limited Liability Company,
10 Plaintiff,
11 vs.
12 DENNIS MONTGOMERY, an individual;
THE MONTGOMERY FAMILY TRUST;
DENNIS MONTGOMERY and BRENDA
MONTGOMERY, as trustees for THE
MONTGOMERY FAMILY TRUST, and
DOES 1 through 20,
13 Defendants.
14 /
15

SE A L E D

VOLUME I of II
TRANSCRIPT OF PROCEEDINGS
HEARING - PRELIMINARY INJUNCTION

Tuesday, February 7, 2006

RENO, NEVADA

24 Reported By: LIZA CHAPEN, RMR, NV CCR #93
California CSR #2065

LIZA CHAPEN, CCR, RMR (775) 323-5492

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A P P E A R A N C E S**E X H I B I T S**

3 For the Plaintiff:
4 HALE, LANE, PEEK, DENNISON & HOWARD
BY: STEPHEN J. PEEK, ESQUIRE
5 --and--
6 JERRY M. SNYDER, ESQUIRE
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
7
8 PILLSBURY WINTHROP SHAW PITTMAN
BY: DAVID A. JAKOPIN, ESQUIRE
2475 Hanover Street
Palo Alto, California 94304-1114
10

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1 RENO, NEVADA, Tuesday, February 7, 2006, 9:01 A.M.
 2 -oOo-
 3
 4 THE COURT: Good morning.
 09:01 5 Please be seated.
 6 All right. We're in session for
 7 CV06-00114. We're here for a hearing on a
 8 Preliminary Injunction.
 9 Would counsel state your appearances for
 09:02 10 the court reporter.

11 MR. PEEK: Good morning, your Honor.
 12 Stephen Peek on behalf of the Plaintiff,
 13 eTreppid Technologies.
 14 Also with me this morning, and you signed
 09:02 15 the order on the pro hac vice, is David Jakopin,
 16 co-counsel; Doug Frye, manager of eTreppid; and
 17 Warren Trepp, also manager and chief executive
 18 officer of eTreppid.

19 THE COURT: All right. Thank you.
 09:02 20 MR. LOGAR: Your Honor, if it please the
 21 Court, I'm Ronald Logar representing the Defendant,
 22 along with Mr. Eric Pulver in my office.
 23 I would like to introduce to you a Michael
 24 J. Flynn.

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1 MR. FLYNN: Good morning, your Honor.
 2 MR. LOGAR: Mr. Flynn is a member of the
 3 Massachusetts Bar. The application for admission to
 4 pro hac vice has been made.
 09:03 5 The Massachusetts Bar has sent a
 6 Certificate of Good Standing to the State Bar of
 7 Nevada. The State Bar of Nevada has issued its
 8 approval.
 9 It was over-nighted yesterday to my
 09:03 10 office. It should be received by Federal Express
 11 about 10:00 or 10:30 this morning, having complied
 12 with the Supreme Court rule as to admission, and we
 13 ask that Mr. Flynn be permitted to appear in this
 14 matter on behalf of the Defendant.

09:03 15 MR. PEEK: Your Honor, I would have no
 16 objection based on that representation that it is
 17 being over-nighted and should be here today. I
 18 accept Mr. Logar's representation as an officer of
 19 this court.

09:03 20 So I certainly -- although I've not seen
 21 the pro hac vice application, I expect the Bar to do
 22 their job.

23 THE COURT: All right. On that basis,
 24 that will be fine. We'll allow that.

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1 MR. LOGAR: And then I'd like to introduce
 2 Mr. Philip Stillman. Mr. Stillman is a member in
 3 good standing of both the Massachusetts and the State
 4 Bar of California.
 09:04 5 He has made application to the State Bar
 6 of Nevada for admission and approval pro hac vice.
 7 His Certificate of Good Standing was sent to the
 8 State Bar's office in Las Vegas yesterday by the
 9 State of California.
 09:04 10 It's expected that the State Bar of
 11 Massachusetts will send the Certificate of Good
 12 Standing to the Las Vegas office today, and then the
 13 Las Vegas office will issue its approval and we
 14 expect that within the next two days.
 09:04 15 The delay on Mr. Stillman is due to the
 16 fact that Mr. Stillman provided with his application
 17 to the State Bar recent admission before a Federal
 18 Court in the State of California; however, since it
 19 was beyond 30 days' time of issuance from the date of
 09:04 20 application, the State Bar said they needed something
 21 more current, so that is the --
 22 MR. PEEK: Your Honor, absent the approval
 23 by the State Bar, I would object to his admission
 24 until the State Bar has at least had its opportunity

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1 to vet and receive, if you will, and then approve.
 2 I would object until that process has been
 3 approved.
 4 MR. STILLMAN: Your Honor, may I?
 09:05 5 THE COURT: No. Mr. Logar.
 6 MR. LOGAR: Well, you know, you indicated
 7 to us, your Honor, when we had our meeting last week
 8 that you have had some difficulty with the
 9 representations of counsel in the past.
 09:05 10 I don't know how to respond to that, other
 11 than the fact that if there was any indication by way
 12 of either Mr. Flynn or Mr. Stillman that there was a
 13 problem, the application would not have even been
 14 filed, nor would I have considered the association.
 09:05 15 I make the representation to the Court in
 16 good faith and ask that Mr. Stillman be allowed to
 17 participate subject to approval and an order signed
 18 by this Court this week.
 19 MR. PEEK: Your Honor, if this were a
 09:06 20 situation where there weren't already able counsel --
 21 I count four at counsel table right now -- to
 22 represent Mr. Montgomery and the Montgomery Trust, I
 23 probably would not have that objection, and I also
 24 know, respectfully to Mr. Logar, whose

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1	representations I accept, but he does not speak for	1	making the objection; if Mr. Jakopin is presenting
2	the State Bar.	2	the witness, he's the one making the objection.
3	So until the State Bar has spoken, I think	3	I assume that that will be the procedural
4	that my objection under SCR Rule 42 is well taken and	4	order of this Court today, that whoever is presenting
09:06 5	should be honored.	5	that witness or cross-examining will be the one
6	THE COURT: Well, the rule, if I recall	6	making the objections.
7	it, SCR 42, says that until approval and the order is	7	THE COURT: All right. Yes, I'd like to
8	signed, that the out-of-state counsel shall not be	8	try to do that just for the purpose of order and
9	allowed to actively participate.	9	organization.
09:06 10	I think with this objection, I'm bound by	09:08 10	Again, you know, I'm interested mostly in
11	the rule so I cannot -- I will allow the first	11	finding out what the truth is here and so that is the
12	gentleman to participate, but I cannot --	12	first goal; procedural proprietary is the second one.
13	MR. LOGAR: I understand, your Honor.	13	So, you know, if something comes up that
14	THE COURT: If it weren't for the rule, I	14	somebody needs to say something and it's not
09:07 15	would.	09:08 15	something that we're doing all day long, that's fine.
16	MR. LOGAR: I understand.	16	So with that in mind, Mr. Peek, are you
17	THE COURT: But one of the things I'm	17	ready to proceed?
18	finding out the longer I'm up here is there are a lot	18	MR. PEEK: We are ready to proceed, your
19	of things that judges think they can do that, if you	19	Honor.
09:07 20	read the rule, they can't, and this is one of them.	09:09 20	THE COURT: All right.
21	I think the rule says "shall not" and	21	MR. FLYNN: Good morning, your Honor.
22	so --	22	Thank you for granting my admission.
23	MR. LOGAR: Well, that is "participate,"	23	Before we proceed, I need to address the
24	but I believe that it's permissible, Mr. Stillman can	24	Court about an urgent and immediate procedural
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	10		12
1	confer with us.	1	problem with regard to how we proceed.
2	THE COURT: Oh, sure. I don't see a	2	THE COURT: All right.
3	problem with that. I don't see a problem with being	3	MR. FLYNN: And I'm going to be limited as
4	able to talk to him.	4	to how much I can flesh out to the Court because of
09:07 5	I think that the rule talks about	09:09 5	the nature of what I'm going to describe to the
6	participate in settlement conferences and various	6	Court.
7	other things, but I don't see -- I don't see that	7	Let me preface my remarks by saying that
8	there would be any reason why you couldn't confer	8	what we're involved in here is of the highest, most
9	with him.	9	secretive, most urgent, most immediate classified
09:07 10	MR. PEEK: And I have no objection to him	09:09 10	security information, that I think, after the Court
11	sitting before the Bar either, your Honor.	11	gets an idea what it is, will agree with me, that can
12	THE COURT: Right.	12	be possibly imagined by this Court.
13	MR. PEEK: It's just a matter of	13	So at the outset, we're dealing with the
14	participating.	14	fact that who has a security clearance in the
09:07 15	THE COURT: Well, I'm hopeful that we're	09:10 15	courtroom and who does not, because everything I'm
16	not going to have, you know, every time there's a	16	going to describe peripherally involves this secret
17	argument, that every lawyer on each side is going to	17	information which goes to the heart, the core issues
18	speak, anyway; I'd like to try to keep it a little	18	of what this Court has to decide, including the core
19	bit more organized than that.	19	issue of what proprietary information is involved and
09:08 20	So I think that we're going to have some	09:10 20	who owns it.
21	conferencing on both sides.	21	The dichotomy existent within eTreppid
22	MR. PEEK: Your Honor, with that in mind,	22	Technologies, between the original deal that was made
23	I'm mindful of that rule and generally what I have	23	under the Contribution Agreement, which I understand
24	seen is that if I'm presenting a witness, I'm the one	24	the Court has seen, for data compression technology
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	13		15
1	has been merged into by the Plaintiff.	1	for the Court to even issue any type of an order or
2	MR. PEEK: Your Honor, I --	2	findings, given the nature of the issues involved,
3	MR. FLYNN: The issues --	3	because I would submit to the Court that the national
4	MR. PEEK: I appreciate counsel's	4	security interests preempt Judicial intervention in
09:10 5	eloquence, but this is not a filibuster. If there's	5	this Court, and that's a strong statement.
6	a motion to be made, make a motion.	6	I believe that the entire proceedings have
7	You asked if I was ready to proceed; I'm	7	to ultimately go over to the Federal Court, be sealed
8	ready to proceed on my motion.	8	in the Federal Court, and even then how they are
9	If there's a motion to be made, as opposed	9	going to be able to proceed is frankly a mystery to
09:11 10	to the superlatives and the filibuster, I'd like to	10	me, your Honor.
11	hear the motion so that we can address if there is a	11	So here's what I -- here is what the
12	motion of urgency to be made, but otherwise I'd like	12	defense recommends: Let the Plaintiff go forward to
13	to proceed with my case.	13	December '02. I've got a chronology that I can give
14	The Court told us we only have today to do	14	to the Court which will basically outline the
09:11 15	this. We have already had over two weeks of delay	15	impending problems.
16	from Mr. Montgomery and I don't want one more delay.	16	Once we reach December '02, we're going
17	So I would appreciate, your Honor, this is	17	into the heart of classified material. At that
18	my case, I'd like to proceed with my case.	18	point, I don't know how we can proceed except for the
19	THE COURT: All right. I believe he's	19	Court to take Mr. Trepp and Mr. Montgomery into
09:11 20	prefacing what he's saying as a preface to some kind	20	chambers and inquire into the nature of the material.
21	of a request or motion.	21	THE COURT: Well, let's see how it goes.
22	MR. FLYNN: That's correct, your Honor.	22	My thought, and again, I'm probably the
23	If the Court will indulge me --	23	least educated individual in the courtroom as far as
24	THE COURT: I will.	24	what this involves, but my thought is that we're not
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	14		16
1	MR. FLYNN: -- for five minutes.	1	here necessarily to talk about the content of
2	THE COURT: I will. Go ahead.	2	whatever "it" is, but the ownership and the right to
3	MR. FLYNN: The dichotomy that exists in	3	possession of "it," and so it would seem to me, and I
4	eTreppid between the technology that was the subject	4	don't know this yet, but it would seem to me that we
09:11 5	of the Contribution Agreement and the most classified	5	can talk about all of those issues and perhaps make a
6	information relating to the technology that's at the	6	determination on those issues without even talking
7	core of this case is the problem.	7	about what the contents of "it" are, and if I'm
8	We could proceed, I believe, up to	8	wrong, then you can explain that to me, and if I
9	December 19th, 2002, in open court, as long as the	9	agree with you, then I agree with you.
09:12 10	court is sealed and perhaps no one else other than	09:14 10	So I'd like to go ahead and give it a
11	the deputy sheriff, the clerk, and the court	11	shot.
12	reporter. I think we're safe there as long as the	12	Secondly, I would like to have some
13	courtroom is sealed even during that phase.	13	reference to some case law, a statutory law, some
14	Once we reach 2002, I think the Court is	14	other authority that says that -- that, one,
09:12 15	going to have to conduct some type of a procedure,	09:15 15	identifies this as classified; two, tells us what
16	and I've been thinking all night what you could do,	16	level of classification that it has; three, by whom;
17	and the only thing I can come up with, because of the	17	and then some kind of statutory case law or other
18	nature of this information, is for you alone to take	18	documentation that would tell us that it was not
19	Mr. Trepp and Mr. Montgomery into chambers with a	19	proper for me to proceed, for us to proceed in this
09:12 20	sworn confidentiality oath by your Honor, under oath,	09:15 20	court, and if I'm persuaded that that's right, then
21	and have them basically explain what is involved.	21	certainly I'll follow the rules.
22	I think the Court will then see that it is	22	I'm surprised I haven't heard from the
23	absolutely impossible, given the national security	23	federal government, if they have such a concern, but
24	interests involved, right now, this minute, today,	24	maybe you can address that.
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	17		19
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p>MR. FLYNN: This information is so secretive, and so compartmentalized within the federal government, that there are very few individuals within the federal government that have access to it.</p> <p>I will tell the Court in open court what is involved, involved daily briefings to President Bush over the last two years, daily briefings.</p> <p>And with regard to your Honor's other point covering the "it" without getting into the content, the "it" is the content.</p> <p>THE COURT: We'll see.</p> <p>MR. LOGAR: Your Honor, we would like to invoke the rule as to exclusion of witnesses for sealing and everything we can do to protect the integrity of these proceedings.</p> <p>THE COURT: All right. I don't know the gentleman seated in the front row back there.</p> <p>MR. PEEK: He's a witness of ours, your Honor. He will step out.</p> <p>THE COURT: All right.</p> <p>MR. PEEK: I don't know who the other --</p> <p>THE COURT: And the other gentleman is my law clerk. He will observe the order that I will</p>	<p>and I say that -- and I'm curious to hear counsel's argument, when we certainly, last Wednesday, heard much about, "I need to be able to talk about my technology to be able to sell my technology," and if -- we had, as you recall, much ado about what the ability was to discuss with others, so I'll take that as a stipulation and I'd ask the Court to enter that kind of an order.</p> <p>THE COURT: Well, I'm happy to do that on the record right now and I will enter that order and it is entered in the record.</p> <p>Does that contain, for the moment, all of the issues that you wanted to address with regard to confidentiality?</p> <p>And I would ask that, in addition, that you prepare some type of a stipulation that meets the concerns you articulated a minute ago, first present it to the other side, present it to me, and then I'll review it, and particularly, if you have reference to any statutory authority or anything else, put that in the stipulation and order, and I'll take a look at it and sign it, more likely than not, particularly if all sides -- if both sides approve.</p> <p>MR. FLYNN: We're happy to do it, your</p>	<p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
	18		20
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p>make here with regard to confidentiality.</p> <p>MR. PEEK: Your Honor, we will have an expert who will come in, and I would like him, of course, to sit in.</p> <p>I think it's appropriate to have an expert to at least sit in on rebuttal, if necessary.</p> <p>MR. FLYNN: Your Honor, I think Mr. Frye, unless he's the first witness, should be removed from the courtroom.</p> <p>MR. PEEK: Your Honor, he's a client. He's a private client. He's a member manager of the company.</p> <p>THE COURT: He can stay.</p> <p>MR. PEEK: Your Honor, respectfully to what counsel had said earlier, I take that also to be that they would at least offer a stipulation that the proceedings conducted here today, the affidavits that have been previously submitted under seal, and the transcript of these proceedings may remain confidential, and may be sealed by this Court only to be opened upon motion --</p> <p>THE COURT: Well --</p> <p>MR. PEEK: -- and that nothing other than that which is stated here today can go any farther,</p>	<p>Honor.</p> <p>We will prepare the stipulation. The problem will become, as your Honor will hopefully be able to learn during these proceedings, that even the attorneys cannot be given access to this information.</p> <p>THE COURT: Do you have access to it?</p> <p>MR. FLYNN: I have limited access, enough to conduct the proceedings.</p> <p>THE COURT: Do you have --</p> <p>MR. FLYNN: Do I have complete access?</p> <p>Absolutely not.</p> <p>THE COURT: Do you have a security clearance of any kind?</p> <p>MR. FLYNN: No, and neither does -- do the gentlemen on the other side of the aisle.</p> <p>MR. PEEK: And, your Honor, I don't have access to the material and I have not had access to the material because the source code has been deleted from our file and taken from our premises.</p> <p>THE COURT: All right. Well, you know, I don't have enough information right yet to know -- to make an intelligent --</p> <p>MR. PEEK: I will review the stipulation, your Honor --</p>	<p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

	21		23
1	THE COURT: All right.	1	lit up?
2	MR. PEEK: -- and make sure that it isn't	2	THE COURT: Yes.
3	too overly broad, because what I'm hearing here	3	THE BAILIFF: Then, it should be working.
4	today, I think, maybe too overly broad.	4	THE COURT: Okay.
09:19 5	THE COURT: Well, we'll see.	09:21 5	THE WITNESS: Can you hear me?
6	MR. PEEK: With that in mind, your Honor,	6	THE BAILIFF: Now, try it.
7	Mr. Jakopin will be presenting the first witness.	7	THE COURT: There we go.
8	THE COURT: All right. Let's go.	8	THE WITNESS: How about now?
9	(The witness was sworn.)	9	Last name, V-e-n-a-b-l-e-s.
09:20 10	THE COURT: Please take the witness stand.	09:22 10	THE COURT: All right. Mr. Venables, just
11	As a preliminary matter, for the record,	11	try to speak up a little bit, too.
12	not only are the parties and counsel but court staff,	12	THE WITNESS: All right.
13	as well, and I include myself in this, are instructed	13	THE BAILIFF: You have a volume control,
14	that anything that's said or done here in this	14	your Honor, right up by your own speaker.
09:20 15	courtroom today, pending the submission and approval	09:22 15	THE COURT: All right. How is that?
16	of an order, is confidential and will not be	16	THE WITNESS: How about now?
17	discussed with third parties outside of the	17	THE COURT: Yeah, I think that's better.
18	courtroom, except to the extent that it needs to be	18	MR. LOGAR: That's better.
19	discussed with witnesses and experts with regard	19	MR. PEEK: Thank you, your Honor.
09:21 20	specifically to the pursuit of the proceedings in	09:22 20	THE COURT: Okay.
21	this particular case.	21	BY MR. JAKOPIN:
22	Go ahead.	22	Q. Can you describe your educational
23	MR. JAKOPIN: Did you swear the witness?	23	background since high school?
24	(Discussion off the record.)	24	A. Since high school, I went to UC Berkeley
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	22		24
1	SLOAN VENABLES,	1	briefly, or for three years; then, I went to graphic
2	called as a witness, having been first duly sworn,	2	design school, learned 3D modeling and computer
3	testified as follows:	3	programming; and since then, I've been self-taught in
4		4	computer programming.
5	DIRECT EXAMINATION	09:22 5	MR. JAKOPIN: Your Honor, our expert is
6	BY MR. JAKOPIN:	6	outside and the bailiff is not permitting him to come
7	Q. Your name, please.	7	in.
8	A. Sloan Venables.	8	Can we have permission to have him come
9	Q. Where do you reside?	9	into the courtroom and attend the proceedings?
09:21 10	A. In the Virginia City Highlands.	09:22 10	THE COURT: All right. I'll allow him,
11	THE REPORTER: Would you spell your name	11	and any expert for the other side, too, if you've got
12	for me, please.	12	one.
13	THE WITNESS: First name, S-I-o-a-n; last	13	MR. FLYNN: We have no expert at the
14	name --	14	present time, your Honor.
09:21 15	MR. LOGAR: Your Honor, I'm sorry. I'm	09:23 15	We object. Under the documents that
16	having difficulty hearing the witness. Could he use	16	Mr. Trepp and Mr. Montgomery signed with the
17	the microphone, please.	17	intelligence department of the U.S. Government
18	THE COURT: Hopefully it works.	18	involved in this case, they would be precluded from
19	Why don't you try to speak up and try to	19	confiding anything to any expert.
09:21 20	use the microphone.	09:23 20	THE COURT: Well, I've got to see the
21	We had some difficulty with it last week;	21	documents. I've got to see some authority. Unless I
22	is it working now?	22	do, I'm going to permit him to be here.
23	THE BAILIFF: Is the button below you on	23	MR. FLYNN: Nor has he been disclosed to
24	the left-hand side, on the ground, is it on? Is it	24	us, your Honor.
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1 THE COURT: I'm still going to permit him,
 2 absent being provided with those documents and
 3 material.
 4 MR. FLYNN: Your Honor will note my
 09:23 5 objection.

6 THE COURT: All right. It's noted.
 7 Go ahead.

8 MR. JAKOPIN: Thank you, your Honor.
 9 BY MR. JAKOPIN:

09:23 10 Q. Can you describe your employment from the
 11 time you finished schooling up until eTreppid,
 12 briefly.

13 A. I worked most recently before eTreppid for
 14 about ten years in the video game industry making
 09:23 15 computer games from the PC platform. Initially, I
 16 was a 3-D modeler and then later on as a programmer.

17 My most recent job before coming to
 18 eTreppid, I was a lead programmer on the last couple
 19 of video games made for electronic cards.

09:24 20 Q. And you began working at eTreppid when?

21 A. In December of '99.

22 Q. And were you one of the first employees?

23 A. That's correct.

24 Q. Who was working there at the time you

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1 facility security clearances and procedures.

2 Q. You work with a lot of different kind of
 3 electronic information, correct?

4 A. That's right.

09:25 5 Q. Could you describe some of the different
 6 types of information that is stored at the company
 7 premises?

8 A. We have, first of all, the source code,
 9 which is a -- basically, source code is a lot of text
 09:26 10 files that is compiled into an actual runnable
 11 program; all of the tools that we use to develop the
 12 source code, which is usually third-party software,
 13 Microsoft developed programs; also all the other
 14 third-party software that we use, the operating
 09:26 15 systems, other tools for developing.

16 So all that stuff is stored, as well as
 17 sample files that we use to run our code on; images,
 18 movies, bit maps, all kinds of files.

19 Q. Are there certain files that are
 09:26 20 classified files, and there's other files that are
 21 not?

22 A. That's correct, based on where the content
 23 came from and who we received it from.

24 Usually, a source code isn't classified.

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1 started?

2 A. Dennis Montgomery; his son, Brian
 3 Montgomery; and they had three contractor Indian
 4 nationals that are no longer there.

09:24 5 They were just briefly there the first
 6 year that I worked there.

7 Q. And when you began, what position did you
 8 have with the company?

9 A. I was initially hired to be a director of
 09:24 10 game development. I brought my video game technology
 11 that I developed on my own with me and sublicensed it
 12 to eTreppid and continued further development on it
 13 for a game that we would someday release from the
 14 company.

09:25 15 Q. So when you worked at eTreppid, then what
 16 did you do?

17 A. Gradually took on more tasks, began doing
 18 all the IT work for the company, all the e-mail, the
 19 WEBSERVER, all the network infrastructure, gradually
 09:25 20 took on all the hardware purchasing, all the hardware
 21 development.

22 Most recently, in the past two years, I've
 23 taken on the role of our facility security officer.
 24 I maintain all of the security clearances and the

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1 So far, we haven't had any classified
 2 source codes, but the bit map images or frames of
 3 pictures have been classified.

4 Q. That would not be all images, but just
 09:26 5 certain ones?

6 A. That's correct.

7 Q. When you say the eTreppid source code,
 8 what are you referring to?

9 A. The actual C++ files that are used to be
 09:27 10 compiled into the software we develop.

11 Q. And who writes that source code?

12 A. Various programmers in the building.

13 Q. Have you written some of that source code?

14 A. Not for a while.

09:27 15 The last stuff I worked on was about 2002.
 16 I worked on a player that we developed for a project
 17 with Intel.

18 I've also worked on the game engine over
 19 the years that we developed.

09:27 20 Other than that, I haven't.

21 Q. Are you responsible for backing up any
 22 information at the company?

23 A. I back up all of our servers that run all
 24 of our infrastructure, our e-mail, our web sites, but

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1 I don't do any of the source code backup; that was
 2 all Mr. Montgomery's job.
 3 Q. And how long have you been doing that?
 4 A. Pretty much from the beginning; the past
 09:28 5 six years.
 6 Q. And why do you back up that information?
 7 A. Hardware always fails. You've got to have
 8 a backup so you can recover from it.
 9 I haven't lost a file since we've been in
 09:28 10 existence. Hardware always tends to fail from
 11 overheating or what have you, mechanical failure, so
 12 if you don't have backups, you won't be able to
 13 recover from it.
 14 Q. Now, is it your understanding that the
 09:28 15 company backed up its source code for the same
 16 reason?
 17 A. Right.
 18 Q. Up until recently, had the company ever
 19 lost any of the source code?
 09:28 20 A. Not to my knowledge.
 21 Q. Is there anyone other than Mr. Montgomery
 22 that was responsible for backing up the source code?
 23 A. No.
 24 Q. For how long had he been responsible for

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1 A. We have different levels of access.
 2 The physical access, it's in a room that's
 3 been locked that only have -- I believe, five or six
 4 people had the key to.
 09:30 5 Log-on access, only Mr. Montgomery and I
 6 had the password to it.
 7 Network access, various programmers in the
 8 building had different file-share level permissions
 9 to the folders, but none of them had a full access --
 09:30 10 full permissions to the file levels under network
 11 sharing; they had modified, which means they can add
 12 but they can't delete.
 13 Full access level was only for
 14 Mr. Montgomery and me.
 09:30 15 Q. And how was that put into place?
 16 A. We had an ET, what we call our eTreppid
 17 administrator account, which only Mr. Montgomery and
 18 I had the password for.
 19 Only with that user account that you could
 09:30 20 get on and log on and change these permissions;
 21 otherwise, you have to go through the networking and
 22 you're subject to all the permissions that we've set
 23 up.
 24 Q. Was there a server other than the

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1 backing up the source code?
 2 A. From the beginning.
 3 Q. Was he also responsible for maintaining
 4 the source code?
 09:28 5 A. As far as I know, that was his job.
 6 Q. How was it maintained?
 7 A. We have a structure, a file system
 8 structure on our server where we kept it, and it
 9 stored various methods underneath the -- our folder
 09:29 10 structure.
 11 We have our current projects. Each
 12 project had a subfolder. We also have a subsystem
 13 of -- all the programmers in the building have
 14 locations where only they can access and store their
 09:29 15 projects.
 16 So all this file structure is all stored
 17 on one of our servers that Mr. Montgomery backed up
 18 to another set of machines in our separate location.
 19 Q. Was there a name for that server that you
 09:29 20 were just talking about?
 21 A. We call it the source server, abbreviated
 22 SRC, S-E-R-V-E-R.
 23 Q. Who had access to the source code that was
 24 on that SRC SERVER?

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1 SRC SERVER that you were referring to?
 2 A. We had another server, a couple -- well,
 3 we have several servers in the building; not all of
 4 them use our source code. E-mail servers, servers
 09:31 5 that run the infrastructure of our network.
 6 We have another server for storing all the
 7 third-party tools that we do, and another server that
 8 I had recently set up, in the past four months, that
 9 was used for a backup to the SRC SERVER.
 09:31 10 Q. Did all of these servers get accessed with
 11 the eTreppid administrator password?
 12 A. All the servers are only logged on with
 13 the eTreppid administrator account, that's right.
 14 Q. And it was only the two of you that had
 09:31 15 access to all of those?
 16 A. That's right. Not even Mr. Trepp knew the
 17 password to the administrator account.
 18 Q. About how large were the total eTreppid
 19 source code files?
 09:31 20 A. Well, from my recollection of doing a
 21 backup some time back, and also I did another backup
 22 in the middle of December, it was about 200 gigabytes
 23 on the SRC SERVER that was copied over to my other
 24 backup server which I call an ISASERVER.

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1	Q. And how large is the memory capacity of	1	But my log files, when I got back, showed
2	the ISASERVER?	2	that they had completed, so I had backed up
3	A. Well, the actual memory is separate from	3	everything from SRC SERVER over to this ISASERVER.
4	the hard drive space. There's -- all of our servers	4	Q. And did your log tell, say, when that
09:32 5	have about one to two gigabytes of memory, but that's	5	finished?
6	just random access memory.	6	A. Some of them finished the night of the
7	The hard drive space on the SRC SERVER is	7	21st; some finished the next day, the 22nd.
8	about -- just shy of three terabytes. My ISASERVER	8	All the log files aren't there anymore;
9	is just over four terabytes, but we weren't using	9	there's only a couple left. Some of them were
09:32 10	anywhere near the capacity on either one of those.	10	deleted.
11	Q. You had mentioned some other work stations	11	Q. Do you have any reason to think that if it
12	that had been used for backing up the eTreppid source	12	didn't occur the way you had programmed it to, that
13	code?	13	it wouldn't have been completely backed up?
14	A. I built two work stations that we kept out	14	MR. FLYNN: Objection, your Honor.
09:32 15	in our warehouse area that had, each of them,	09:35 15	THE COURT: What's the objection?
16	attached storage box, what we call RAID storage box.	16	MR. FLYNN: None of this testimony -- the
17	Each of those stored about 1.7, 1.8 terabytes.	17	entire course of the testimony so far has been
18	Those are used to back up what was on	18	utterly lacking in foundation.
19	SRC SERVER.	19	THE COURT: Well, I think there --
09:33 20	Those backups were made by Mr. Montgomery	09:35 20	MR. FLYNN: I'd move to strike all of the
21	on a regular basis.	21	testimony, but I'm trying to cut through it, so I
22	Q. As of, say, around December 21st, 2005 --	22	don't want to keep objecting because I believe I've
23	A. Uh-huh.	23	got a way to cut through and across --
24	Q. -- what was your understanding of where	24	THE COURT: All right. Well --
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	34		36
1	complete copies of the source code existed at	1	MR. FLYNN: -- but none of this has any
2	eTreppid?	2	foundation.
3	A. As far as I know, there was the complete	3	THE COURT: All right. Until I learn a
4	original copy on the SRC SERVER, as well as copies on	4	little bit more about the background, it's hard for
09:33 5	each of these two work stations in our warehouse.	09:35 5	me to evaluate that.
6	The work stations in the warehouse also	6	MR. FLYNN: I understand that.
7	had copies of all the hard drives of all the	7	THE COURT: There's not a jury here, so
8	programmers in the building.	8	I'm going to allow the testimony.
9	Those were copies made by Mr. Montgomery	9	Go ahead, sir.
09:33 10	on a fairly regular basis. I had seen him doing it	09:35 10	THE WITNESS: What was the question?
11	pretty often, multiple times a week over the past	11	MR. JAKOPIN: I think you finished.
12	several years.	12	I think it was just an objection after the
13	Q. You had mentioned an ISASERVER; was it	13	conclusion.
14	also stored there?	14	THE COURT: All right. For the record,
09:33 15	A. Up until December 21st, that was just in	09:35 15	the objection is overruled. I think this is
16	testing.	16	foundation to what ultimately we're going to get to.
17	On December 21st, I made a copy of	17	Seems to be, at any rate, as least as of
18	everything on SRC SERVER. I was going on a trip on	18	now.
19	December 22nd for the holidays, I went out of the	19	Go ahead.
09:34 20	country, and I started copies, part of them completed	09:35 20	BY MR. JAKOPIN:
21	before I left on the 21st.	21	Q. Could you describe how the programmers
22	I was there until about 11:00 o'clock on	22	have their work stations configured and how they
23	the night of the 21st finishing up the copies, and	23	relate to the SRC SERVER?
24	when I left some of them were still going.	24	A. The programmers have a hard drive on their
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1 machine outside of their regular operating system 2 hard drive that's kept on there. Their folder called 3 Current Source was for the projects they're currently 4 work on.		1 setting up the ISASERVER and running the backups. 2 And the next morning, I left on my trip to 3 Budapest.	
09:36 5 That Current Source folder contains their 6 working in progress and the projects that they're 7 currently programming on. Those folders are copied 8 by Dennis over to the two work stations we keep in 9 our warehouse for backing those up.		4 Q. You were gone until when? 09:38 5 A. I got back the late night of the 2nd, 6 January 2nd. 7 Q. And did you at some point go back to the 8 office?	
09:36 10 Q. And do the programmers have personal work 11 stations? 12 A. Every programmer has at least one. 13 Some of them have two for testing 14 purposes.		9 MR. LOGAR: Could you speak up, please. 09:38 10 I'm sorry. 11 BY MR. JAKOPIN: 12 Q. At some point did you go back to the 13 office?	
09:36 15 Q. What's the operating system on the work 16 stations that they have? 17 A. Windows XP, on the majority. 18 There's a few that have Windows 2000 for 19 testing, and then they were programming with some 09:36 20 older code that wouldn't compile on windows XP.		14 A. The morning of the 3rd, I came to work. 09:38 15 Q. What did you discover then? 16 A. When I got into the office, I noticed 17 that -- my office is situated right next to our 18 server room with the door so I can see through to my 19 servers, and I noticed that somebody had been doing 09:38 20 something on our SRC SERVER. 21 And so I went over and looked at it and 22 there was a command prompt window up doing something 23 which I didn't know what it was, and Dennis came in 24 at that point and I asked him what he was doing and	
21 Q. Directing your attention to the last day 22 that you were at the office before you went on your 23 vacation. 24 A. Uh-huh.	LIZA CHAPEN, CCR, RMR (775) 323-5492		LIZA CHAPEN, CCR, RMR (775) 323-5492
	38		40
1 Q. Can you describe what happened that day? 2 A. I came in that day. 3 At the beginning of the day, I called as I 4 was coming in for some reason, I forgot what it was. 09:37 5 I called Dennis and he asked me if I'd 6 gotten all my preparation ready for my trip and I 7 said no, and he said, "Well, stay home and do your 8 packing or whatever," and I told him I was almost to 9 the office anyway, so I was coming in. I wanted to 09:37 10 get the ISASERVER finished setting -- setting up and 11 doing the backups. 12 We had talked about setting the ISA up for 13 doing the backups of SRC SERVER and also our 14 DEV SERVER. 09:37 15 So I came in and I got my stuff arranged 16 in my office and I went out to the warehouse, and 17 that's when I noticed that the work -- one of the 18 work stations that had the RAID box attached to it 19 was gone, and I asked Dennis where it was. 09:37 20 This was one of the ones that he used for 21 backing up the SRC SERVER. 22 And he said he'd taken it home, and he 23 didn't tell me why. 24 And so then the rest of the day I spent		1 he said he was doing some clean-up work, getting rid 2 of old stuff we didn't need anymore. 3 So then I believe one of our employees, 4 Jim Bauder, came in at that point and started talking 09:39 5 to me like he usually does each morning, and Dennis 6 left. 7 So then I started going over the SRC SERVER 8 and noticed that most of our subfolders on that -- on 9 our source RAID box had been all deleted out. 09:39 10 Q. What did you do then? 11 A. I went to go look on my backup server, 12 ISASERVER. They're all attached to the same monitor 13 and keyboard, so I just do a command to switch over 14 to the next computer, and that machine was totally 09:39 15 locked up. I couldn't log on to it. It wasn't 16 responding at all. 17 So then I went back to my desk and tried 18 to look at that machine through the network and I 19 could see the ISA box was responding, that ISA's RAID 09:40 20 was responding through the network and it also had 21 been completely deleted out. 22 Q. Did you ask Mr. Montgomery about this? 23 A. Right away -- I think I talked to some 24 other people, asked what happened while I was gone,	
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1	and they said strange stuff had been going on. Stuff	1	Q. What happened the week, I guess, beginning
2	had been gradually being deleted.	2	January 9th?
3	Then, I went out to the warehouse to ask	3	A. Well, on the 8th, which is a Sunday,
4	him about it and I asked him where the backup was and	4	Mr. Trepp called me at home and asked me if anything
09:40 5	he said he was bringing that -- the backup work	09:42 5	unusual had been happening, and I told him that when
6	station with the RAID box from our warehouse, that he	6	I got back from my trip that all the code on our
7	was bringing it back, he was done with it or	7	SRCSERVER had been deleted off.
8	something like that.	8	So he asked me to come in early the next
9	But he never told me what happened on the	9	day to talk about it, and asked Mr. Montgomery what
09:40 10	SRCSERVER. He said he didn't do anything or	09:42 10	was going on.
11	something to that effect.	11	When I got in that day, Mr. Montgomery was
12	Q. What happened the rest of that week?	12	only there for like an hour or two and he left and
13	A. I was going over the machines, assessing	13	never came back for the rest of the day.
14	what the damages were while I was gone. I was trying	14	So that day we started looking around the
09:40 15	to get ISA back up, realized that one -- something	09:42 15	building to see what else was missing, and we had
16	had happened to it.	16	basically everyone in the building going through
17	It had been working in my office for a	17	stuff.
18	good three months before I put it into its permanent	18	He said he was coming back but he never
19	location, so I figured something was -- something had	19	came -- Mr. Montgomery never came back.
09:41 20	happened to it while I was gone, either malfunction	09:43 20	So we spent most of the night -- I was
21	or sabotage.	21	also getting ready for my visits on the 10th. I had
22	Also, I started asking all the people in	22	Jay Dixon from the Defense Security Service there
23	the building what had been going on, and they told me	23	first thing in the morning.
24	that Dennis had deleted all the code off their	24	And also when I got there that morning --
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	42		44
1	machines while I was gone, and that he was	1	I called before I came to the office, and Dennis said
2	gradually -- just giving them little bits and pieces	2	he was going to be there when I got there.
3	to work on.	3	I asked if he was going to be in that day.
4	MR. FLYNN: Objection, your Honor; move to	4	He said, "I'll be there when you get there."
09:41 5	strike. Hearsay, speculation, lacks foundation.	09:43 5	When I got there, he was out in the
6	He's just guessing.	6	warehouse with Mr. Trepp and a friend of Mr. Trepp's,
7	THE COURT: I think as to hearsay, it's --	7	yelling at him, obscenities, going through the
8	it is hearsay; I will sustain it.	8	warehouse out the back door, and he got in his truck
9	MR. JAKOPIN: It's just foundational, your	9	and drove away.
09:41 10	Honor. It's not --	09:43 10	We spent the rest of that day meeting with
11	THE COURT: It's not offered for the truth	11	Jay Dixon, explaining to him that we had major chaos
12	of the matter? I think it is. I'm going to sustain	12	going on and personnel problems, and he basically
13	it.	13	told us that we've got to go through a bunch of
14	THE WITNESS: That was a short week, so	14	procedures for -- we also -- procedures for
09:41 15	that was about all that happened that week, I	09:44 15	determining what happened.
16	believe.	16	We also determined that possible -- it was
17	We were also preparing -- we had a, for	17	possible that Dennis Montgomery had taken or shown
18	our facilities security clearance, we had our	18	some of our classified material to foreign nationals,
19	Inspection scheduled for -- I believe the 9th.	19	so I started that investigation on what happened with
09:42 20	We had our representative for the Defense	09:44 20	that situation.
21	Security Service coming on the 9th, so I was	21	MR. FLYNN: Your Honor, objection; move to
22	preparing our facility security documents for that	22	strike, speculation.
23	visit.	23	And can we have the identity of the people
24	BY MR. JAKOPIN:	24	present? He keeps saying "we."
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	45		47
1	There's been no foundation as to who was	1	A. The 10th was the morning when the chaos in
2	present on -- in any of these conversations or	2	the warehouse between him and Mr. Trepp was going on.
3	circumstances, and the last part of the testimony was	3	Later on, I called -- Mr. Trepp asked me
4	just rank hearsay and speculation and lacks -- lacked	4	to call him to come back to the office to talk to us,
09:44 5	foundation.	5	and Dennis came back and he went into Dennis' --
6	THE COURT: Well, I think he's simply	6	Warren's office and they talked privately.
7	reciting events that took place to show what his	7	And then Dennis came over to my office and
8	conduct and state of mind were at the time. I'm	8	I asked him what was going on, and he said that
9	going to overrule the objection.	9	Warren was trying to screw him out of money for
09:44 10	It would be appropriate, however, to	09:47 10	years, he hadn't been paying him properly for his
11	identify who the "we" is.	11	source code, and he said --
12	THE WITNESS: The "we"? Do you want me to	12	I said, "What about this latest project we
13	say it?	13	have, our" -- "this classified project that was of
14	THE COURT: Yeah.	14	extreme importance?"
09:45 15	THE WITNESS: All the employees in the	09:47 15	And he said that if the company wanted it,
16	building, as a group.	16	they had to give him big money.
17	We were -- I'd say Jessie Anderson, Jim	17	And then he left and he never came back to
18	Bauder.	18	the building since.
19	I can list all the people that worked for	19	Q. You had mentioned before that the company
09:45 20	the company. It was -- the whole company was going	09:47 20	had a security system with cameras.
21	through the hard drives in our warehouse, going over	21	Could you describe that?
22	video -- our -- we went to check our surveillance,	22	A. We've got about 16 cameras in our
23	Mr. Trepp and myself did that, check our surveillance	23	building, and last summer we installed -- we
24	video cameras, which had all been deleted.	24	originally had maybe 12. We installed different
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	46		48
1	We noticed that on the 10th, as well.	1	cameras on the roof and we ran all the feeds for
2	I can't remember all the -- Patty Gray	2	these cameras out to our warehouse area, the area
3	wasn't there that day, or maybe -- no, she wasn't.	3	where Dennis usually works, and we set up 16 work
4	Len Glogauer.	4	stations, one work station for each camera, and they
09:45 5	Everybody in the building besides Patty	09:47 5	digitally recorded all the footage coming off of
6	Gray and Dennis Montgomery were there, all the	6	these cameras.
7	employees, which I'm sure they can give you a list	7	Dennis maintained it; I didn't. I had --
8	of. They were all present.	8	my only involvement was originally setting up the
9	THE COURT: All right. Are those names	9	hardware. After that, he maintained all the actual
09:45 10	you've given us the ones you recall right now?	09:48 10	recording and maintenance of these machines. He and
11	THE WITNESS: Uh-huh.	11	his son.
12	THE COURT: All right. Go ahead.	12	I don't know, Jessie might have had some
13	BY MR. JAKOPIN:	13	involvement. I don't know.
14	Q. Did you have any discussions with	14	Q. And you had mentioned that you and
09:45 15	Mr. Montgomery on Monday the 9th?	09:48 15	Mr. Trepp had gone and looked at what was stored on
16	A. Other than he asked me -- I didn't call	16	that video system?
17	him over the weekend to go trap shooting like we	17	A. About noon on the 10th, we went and looked
18	usually do. I said I just wanted to relax after the	18	on the -- all of those hard drives for those
19	trip. That was about it.	19	recording machines had been cleaned off. The last
09:46 20	Q. Anything else that day?	09:48 20	modified date on the folders for recording was the --
21	A. The 9th, no.	21	between 8:00 and 9:00 in the morning on the 9th, so
22	The 10th, we did.	22	for that -- for those modified dates, it means that
23	Q. What happened on the 10th, in terms of	23	those folders -- the last time something was on those
24	conversations?	24	folders was between 8:00 and 9:00 a.m. in the morning
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	49		51
1	of January 9th.	1	lot -- we ran recovery software starting on the 10th
2	After that, it had been deleted off.	2	to try to recover deleted files on everybody's
3	Q. Does eTrepid have an alarm system?	3	machines.
4	A. Yes, we do, maintained by ATD.	4	And all the programmers' work stations had
09:48 5	Q. Could you describe that?	09:51 5	a wipe and delete program, which is a program used to
6	A. We've only got -- I believe there was five	6	wipe off space on the hard drive. The military uses
7	codes for the alarm prior to the -- prior to this	7	them to declassify hard drives. It wipes zeroes
8	incident.	8	every space on the hard drives.
9	Dennis had one, Warren had one, I had one,	9	So all of the programmers' machines had
09:49 10	Patty had one, and I believe Jessie Anderson and Jim	09:51 10	run -- had this wipe and delete program run on all of
11	Bauder shared one; and only those people could turn	11	them, so nothing was able to be recovered from any of
12	off the alarm to come in the building at any time	12	those.
13	they wanted to.	13	But I ran it on Dennis' personal work
14	Barjinder Bal probably had one; I'm not	14	station and they had wipe and delete run on there but
09:49 15	sure.	09:51 15	it hadn't wiped and deleted all the areas.
16	I had an old list of who had what alarm	16	The recycle bin area hadn't been wiped.
17	codes from 2002, so I don't know what the -- when we	17	It had been emptied but not wiped, and I recovered
18	moved into the building, I don't know what had	18	nine e-mail files from that that had been deleted on
19	been -- changes made since then.	19	or before December 11th and 12th.
09:49 20	Q. Can you tell by those codes who turned the	09:52 20	Q. Did any of the other employees complain
21	alarm on and off?	21	about their e-mail files that had been deleted?
22	A. Each user, from my file, which is the	22	A. I had one programmer, Krishna Tangirala,
23	November of 2002, that I got from Dennis, it had user	23	complain that when I was gone, Dennis took his hard
24	numbers for each code.	24	drive away and gave it back to him with just a clean
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	50		52
1	So, for example, I think I was User	1	slate hard drive, just the operating system.
2	No. 12, Dennis was User No. 13, and the ATD Alarm	2	And I asked Dennis about that. This is
3	logs which we received shows what user number came in	3	the week of the 3rd to the 6th. I asked Dennis and
4	and what hours, which one set the alarm, which one	4	he said that Krishna's machine had crashed and died.
09:50 5	turned the alarm off.	09:52 5	And I asked Krishna and he said that
6	Q. Could you tell -- is a report generated of	6	wasn't true. The computer was working fine; he just
7	those codes?	7	took his hard drive.
8	A. Right. ATD keeps those and we get them by	8	MR. FLYNN: Objection; hearsay.
9	request.	9	THE COURT: Sustained.
09:50 10	Q. Did you request a report for who was in	09:52 10	MR. FLYNN: Objection, hearsay.
11	and out of the building on the weekend of January 7th	11	THE COURT: It's sustained.
12	and 8th?	12	Ask another question.
13	A. Yes, we did. I requested it when I	13	MR. JAKOPIN: Fine, your Honor.
14	checked -- we reset the alarm codes on the building	14	BY MR. JAKOPIN:
09:50 15	on the 10th. We had ATD come out and reset the codes	09:53 15	Q. Other than Krishna, did any other
16	and we added new codes for just a smaller group of	16	employees complain about e-mails having been deleted?
17	people, and we also got the log and it showed the 7th	17	MR. FLYNN: Objection; hearsay.
18	and the 8th weekend, User No. 13, which is Dennis, is	18	THE COURT: I'm not sure I'm going to
19	the only one that came in the building.	19	sustain that. I think this goes more to their state
09:50 20	Q. Let me ask you a few questions.	20	of mind and what they did afterwards than it does the
21	You had talked about e-mails. Were there	21	truth of the matter.
22	any e-mails that were deleted at the company?	22	I'll consider it only for the former as
23	A. Well, I don't know about everybody, but I	23	opposed to the latter.
24	know in particular I ran recovery software on a	24	Go ahead.
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	53		55
1	BY MR. JAKOPIN:	1	Q. Okay. Now, so you agree with me, though,
2	Q. Answer the question.	2	that in your Declaration, you used the singular
3	A. They didn't delete -- I don't believe they	3	eTreppid source code.
4	complained about e-mails being deleted; they	4	In your testimony here, you've been using
5	complained about source code on their machines being	5	the eTreppid source code in the singular.
6	deleted.	6	You agree with that?
7	Q. Did you do any recovery for e-mails of	7	A. Right.
8	anyone other than Mr. Montgomery's e-mails?	8	Q. But what you really meant was
9	A. E-mails, no.	9	collectively?
10	I only -- we tried recovery of all files	10	A. Right.
11	deleted, not just e-mails. We tried to recover	11	MR. JAKOPIN: Objection; argumentative.
12	anything deleted.	12	BY MR. FLYNN:
13	So we weren't just narrowing in on	13	Q. Is that correct?
14	e-mails; we were trying to figure out what was	14	THE COURT: No, I think it's a question.
15	deleted.	15	09:55 It's not a statement.
16	We didn't know what was deleted overall,	16	Go ahead, answer it.
17	so we were trying to recover to determine what was	17	THE WITNESS: That's correct.
18	deleted.	18	BY MR. FLYNN:
19	MR. JAKOPIN: That's all I have.	19	Q. Now, let's talk about what collectively
20	THE COURT: Cross?	20	means.
21		21	When you first started working at
22	CROSS EXAMINATION	22	eTreppid, describe actually what you were doing.
23	BY MR. FLYNN:	23	A. I was programming the game engine that I
24	Q. You testified about a conversation that	24	had developed previous to working for eTreppid,
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	54		56
1	you had with Mr. Montgomery about big money?	1	1 continuing developing on it.
2	A. Right.	2	2 Dennis and Warren wanted me to possibly
3	Q. And I believe you said that Mr. Montgomery	3	3 make it into a Kenny Rogers video game, The Gambler.
4	said that unless the government gave him big money --	4	4 We explored that route.
5	something; is that correct?	5	09:56 5 We explored many different routes, but
6	A. No.	6	6 programming it.
7	Q. No?	7	7 Q. How long did you work on that?
8	A. He didn't mention the government.	8	8 A. Couple of years.
9	Q. Was it unless Mr. Trepp gave him big	9	9 Q. How many files would you estimate you
10	money?	10	09:56 10 created? Computer files?
11	A. Mr. Trepp was the words he used.	11	11 A. Couple thousand.
12	Q. And that conversation took place on	12	12 Q. How many computer libraries would you
13	January 10th?	13	13 estimate you --
14	A. That's right. In my office.	14	14 A. I'm including the libraries.
15	Q. Now, let's go back to the beginning of	15	09:56 15 When you compile source code, it generates
16	your employment.	16	16 libraries as intermediate files. You can also use
17	I've noticed in your Declaration and your	17	17 those as final files, but I'm including those files,
18	testimony here, you keep using the singular eTreppid	18	18 as well.
19	source code.	19	19 Q. So can you characterize any of these files
20	Are you aware of that?	20	09:56 20 collectively as libraries? Or no?
21	A. I call it the collective. It's multiple	21	21 A. Libraries are part of a source code.
22	projects, multiple source code files, so eTreppid	22	22 They're pre- -- they're intermediate compiled file.
23	source code is probably more than a hundred different	23	23 Q. How many source codes were there for this
24	projects, thousands of files.	24	24 video game technology?
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1	A. The actual C++ files is what you're	1	during that two-year period that we're talking about?
2	referring to?	2	A. I don't recall.
3	Q. Explain to the Court what a C++ file is.	3	I worked on it with a couple of other
4	A. That's the actual -- when you're	4	programmers.
09:57 5	programming, you can program in various languages. I	09:58 5	Q. During this period of time, did you work
6	programmed in C++.	6	on any other additional projects other than those
7	They're basically text files. You can	7	two?
8	read them with just a regular notepad, even, and	8	A. Program-wise, no.
9	these compile to generate libraries as intermediate,	9	Q. So during this two-year period,
09:57 10	and finally as an executable.	09:59 10	collectively, how many source codes did you create
11	So I -- you create the text -- these	11	for eTreppid Technology?
12	various text -- C++ text files, and I would say there	12	A. Just add up the ones we just talked about.
13	were several hundred; maybe 800 in the game engine.	13	Q. So how many? Roughly?
14	Q. Eight hundred source codes just for the	14	A. Lines of code or files or what are you
09:57 15	video technology that you worked for two years on?	09:59 15	asking?
16	A. Correct.	16	Q. Well, let's deal with lines of code.
17	Q. And that takes us up to 2001?	17	A. A code isn't like some little simple card
18	A. Into 2002.	18	or something. It's not just one little bit of
19	Q. And the --	19	number. You wouldn't call that a code. You would
09:57 20	A. I mean, I still work on -- I'm still	09:59 20	call -- source code is what makes up a program.
21	working on it regularly with one of our programmers,	21	So to make up, like, say, for example,
22	Michael Svatek.	22	Windows Media Player, they have thousands -- 10, 20,
23	Q. Were there any other projects you worked	23	40,000; who knows how many. You would call that
24	on between the inception of your employment and	24	collectively the source code that makes Windows Media
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	58		60
1	throughout the time you were working on the video	1	Player.
2	game project?	2	Q. But there are, in fact, tens of thousands
3	A. The player that we used for the Intel Home	3	of codes? Lines of code?
4	Theater System.	4	A. Lines of code is more accurate.
09:58 5	Q. And how many source codes did you create	10:00 5	Q. And collectively, to access those tens of
6	for that?	6	thousands of lines of code, how much source coding
7	A. I can't recall with that.	7	would you need?
8	There was not as many as the game engine,	8	A. Your question doesn't make much sense.
9	but a couple hundred.	9	Q. Does it all end up in an executable file?
09:58 10	Q. How many lines of code were involved --	10:00 10	A. It all ends up in one file.
11	are involved in the video game technology?	11	Or possibly auxiliary DLL files, which are
12	A. Thousands.	12	helper files, if you want to be simple about it.
13	Q. Tens of thousands?	13	DLLs are like -- you would say Windows
14	A. Tens of thousands.	14	Media Player has one executable and maybe 10, 20
09:58 15	Q. But you're not calling those source codes?	10:00 15	additional files to make it run.
16	Because that's not C++ coding?	16	Q. All right. How many lines of code are
17	A. That is C++ coding.	17	involved in those two types of files? The helper
18	Q. So there were tens of thousands of source	18	file or the executable?
19	codes just for the video game technology?	19	A. Tens of thousands; 50,000, maybe a hundred
09:58 20	A. You wouldn't call that source code.	10:00 20	thousand.
21	Source code refers to the actual code to	21	For like the Windows Operating System,
22	make up a program.	22	it's millions of lines of code.
23	Q. Okay. And on this second project you were	23	Q. So if we were dealing with something you
24	working on, how many lines of code did you create	24	want to call source code to access that --
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1	A. Uh-huh.	1	distinction?
2	Q. -- how many actual lines of code would we	2	A. -- one percent of the eTreppid source code
3	be dealing with in that source code?	3	is the game engine.
4	A. For what, like the player I made for	4	Q. Thank you.
10:01 5	Intel?	10:02 5	So if there are tens of thousands and that
6	Q. Yeah.	6	represents one percent, then the eTreppid source code
7	A. That one had thousands of lines.	7	involves millions and millions of lines of code, does
8	The game engine that's, you know -- lines	8	it not?
9	in there, I believe there's 50,000, probably, in all	9	A. We don't have that much. The game engine
10:01 10	the various parts.	10:03 10	is more complex than a lot of the other eTreppid
11	Q. And what would you call those? Source	11	stuff.
12	codes?	12	I would say in the hundreds of thousands.
13	A. There's no codes, plural; it's code,	13	Q. Are you able to draw on the blackboard an
14	singular.	14	outline of the network structure, the infrastructure
10:01 15	Q. But it involves tens of thousands of lines	10:03 15	at eTreppid Technologies?
16	of code?	16	A. Yes.
17	A. Lines of code is the actual term.	17	Q. How the computer network was set up?
18	Q. Okay. Now, where is that technology	18	A. Yes.
19	today?	19	MR. FLYNN: With the Court's permission,
10:01 20	A. Which technology?	10:03 20	could we move the blackboard perhaps over here so the
21	Q. This technology for the video game?	21	Court could see it?
22	A. We have that. That hasn't been deleted.	22	THE COURT: Yes.
23	It's kept on my machine; my programmer,	23	MR. FLYNN: And have the witness --
24	Michael Svatek's, machine; and also we have that	24	BY MR. FLYNN:
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1	still on our SRC SERVER.	1	Q. Before we do that, did you have, in your
2	That wasn't deleted.	2	home, a personal connection to all of the servers at
3	Q. So when you were giving your testimony on	3	eTreppid Technology?
4	direct, when you said all these source codes --	4	A. I had a dial-up VPN at my house, virtual
10:02 5	eTreppid source code was deleted --	10:04 5	private network.
6	A. Uh-huh.	6	That lets me connect to the office through
7	Q. -- you weren't referring to two years of	7	an encrypted tunnel so the passwords or anything else
8	work and tens of thousands of lines of code, perhaps	8	couldn't be spied on over the Internet, and I had set
9	millions?	9	up that VPN in September of this past year so I can
10:02 10	A. Dennis has never had any involvement in	10:04 10	monitor our mail server on our WEB SERVER.
11	doing the game engine.	11	Q. Why did you set that up?
12	Q. Please, please, Mr. Venables.	12	A. So I can monitor our mail servers and our
13	You were not referring, even though you	13	WEB SERVER and our network status.
14	used the singular, you were not referring to those	14	Occasionally, our networks would go down
10:02 15	tens of thousands of lines of code on the video game	10:04 15	and I wanted to make sure that -- Dennis wanted to
16	technology, were you?	16	make sure -- I wanted to make sure that they weren't
17	A. No.	17	going -- they weren't dying on us, and I can watch
18	Q. And that is eTreppid source code, isn't	18	them from my house.
19	it?	19	That could only be connected to from my
10:02 20	A. That's some of the eTreppid source code.	10:04 20	house.
21	Q. But you didn't make that distinction, did	21	Q. Did anyone else have that capability?
22	you?	22	A. No.
23	A. We've got, I would say --	23	Patty Gray wanted it set up for her house
24	Q. Please. Again, you didn't make that	24	in Phoenix, but we hadn't set that up yet.
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1 Q. And so you -- what would you call it, a
2 virtual private network?
3 A. That's right.
4 Q. Can you tell the Court whether you did
10:05 5 this because after a certain date and time there
6 seemed -- there began a period where there were tens
7 of thousands of efforts to intrude into the eTreppid
8 software?
9 A. After, I believe, our first military
10 contract was made public by some sort of press
11 release by somebody in the military, our network was
12 constantly under attack.
13 So we beefed up our router system. I got
14 a much stronger Cisco router, and I ran -- started
10:05 15 running intrusion detection software to see who was
16 trying to get into our network from the outside.
17 Q. Now, many hits after the first -- can we
18 call it a military contract?
19 A. Right.
10:05 20 Q. After the first military contract was made
21 public, as you put it, how many hits began to appear
22 per day?
23 A. We were getting thousands a day, probably
24 four or five thousand.

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1 Q. All right.
2 A. I was involved in --
3 Q. You never had access to any of them?
4 (Discussion off the record.)
10:07 5 THE COURT: One at a time.
6 MR. PEEK: Will he be allowed to finish
7 his answer before --
8 THE COURT: Yes, yes, yes.
9 BY MR. FLYNN:
10 Q. What's the answer to my question?
11 THE COURT: Let him finish the last
12 answer.
13 THE WITNESS: Which part?
14 THE COURT: Do you remember the question?
10:07 15 BY MR. FLYNN:
16 Q. Did you ever have access to any of the
17 lines of code done by Mr. Montgomery on the secret
18 government projects?
19 A. I know what executables we delivered. I
10:07 20 was involved with the delivery.
21 The actual code to generate those
22 executables, I haven't seen any of that.
23 Q. You were never given access to them, were
24 you?

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1 It's tapered off since, but initially
2 there were a lot; 4- to 5,000 range.
3 I keep a log. I have a log of all the
4 inputs. It's been recording since that period.
10:06 5 Q. And prior to that, how many hits per day
6 were you getting? Prior to the military contract?
7 A. We host various web sites, so including
8 those, probably a couple hundred, maybe 500 a day.
9 Q. So it went from 500 a day to 4- to
10:06 10 5,000 --
11 A. Thousand.
12 Q. -- or more per day?
13 A. Right.
14 Q. Now, the first military contract, just in
10:06 15 as few words as possible to give a description of it
16 for the Court, how would you characterize it, just in
17 terms of some type of a description?
18 A. I don't have all the details about our
19 contract. Warren and Dennis --
10:07 20 Q. In fact, you never had access to any of
21 the source codes or any of the government contracts,
22 did you?
23 A. I don't actually -- I know what programs
24 we delivered to them.

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1 A. Right.
2 Q. Now, can we use the term, for the first
3 military contract, facial recognition?
4 A. I don't even know if that was it.
10:08 5 I believe the first contract was more with
6 the Predator. That's the public -- public --
7 publicly known thing.
8 Q. So you don't even know which one actually
9 came first?
10:08 10 A. Huh-uh. I have a --
11 Q. Is it fair --
12 Go ahead.
13 A. I have an actual -- for part of our
14 facility, military facility, I've got copies of
10:08 15 the -- what's called DD Form 254, which is the
16 military contract form.
17 I have the copies of the original one of
18 that, and the first one came from the Air Force.
19 Q. So you were given -- because of the actual
10:08 20 form in the contract, you were given some knowledge
21 by someone at eTreppid about what the end result was
22 of what Mr. Montgomery was doing; is that a fair
23 characterization?
24 A. Just overall, general, what it was about.

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1 Q. But you would never -- no one ever told
2 you specifically what he was doing?
3 A. No.
4 Q. All right. If we could have you create an
10:09 5 outline of the networking infrastructure at
6 eTreppid --
7 THE COURT: Is there something for him to
8 write with?
9 THE CLERK: I believe there's chalk up
10 there.
11 THE COURT: Okay. All right.
12 THE CLERK: Would they like to use the
13 paper or the chalkboard?
14 THE COURT: I prefer the paper, if we've
10:09 15 got some.
16 MR. FLYNN: The paper may be better for
17 your Honor, if you could just maintain custody of it.
18 THE COURT: I'm going to maintain custody
19 of it after it's filled out.
10:09 20 And we'll mark it --
21 MR. FLYNN: Thank you, your Honor.
22 THE COURT: -- as Exhibit 1.
23 Did you hear that, Greg?
24 THE CLERK: Yes.

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1 This one IP is set up -- I don't even need
2 to tell you what it is, but it's one private IP
3 everybody's in the building, looks like, out on the
4 network, on the Internet. So if you're busy in a web
10:11 5 site, everybody in the building looks like just one
6 IP.
7 Then, every -- all the machines in the
8 building are plugged into this. That includes our
9 servers and all the work stations that all the
10 programmers use.
11 I had one other segment of network set up
12 out in the warehouse. These are the machines that
13 Dennis used regularly for doing some of his
14 classified projects.
10:11 15 Those were going through another machine.
16 That machine was the gateway to this network. There
17 weren't any restriction controls; this traffic was
18 two-way.
19 We were going to put another router here
10:11 20 in place of this computer because this computer was
21 not very reliable.
22 That's the basic structure.
23 BY MR. FLYNN:
24 Q. What would we call this?

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1 (Exhibit 1 was marked for identification.)
2 THE WITNESS: What exactly do you want me
3 to diagram?
4 Network structure is pretty open; we don't
10:10 5 have a lot of divisions.
6 (Discussion off the record.)
7 THE WITNESS: Our network structure is
8 fairly open. We don't have any subdivisions or
9 sub-networks on our network.
10:10 10 We have our main Internet, say, coming --
11 say this is the Internet coming into our main router,
12 which is Cisco router. In that router, I have a list
13 of fire wall instructions which prevents what can
14 come into the network.
10:10 15 I basically let everything go out; there's
16 no restriction on that.
17 After that, I have a series of switches
18 set up in a rack that all of the computers in the
19 buildings are set up to. I actually go through
10:10 20 another intermediate router before this, which does
21 our NAT, which is Network Address Translation.
22 So everybody on the Intel network is on a
23 private IP segment, so these machines can't even be
24 seen from the Internet except through one IP.

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1 You said it's in the warehouse? This set
2 of machines that you said Dennis was working with?
3 A. Dennis called them the cluster. They were
4 a group of Windows XP work stations set up in -- at
10:12 5 various times, we had different amounts.
6 There's about five of these work stations
7 in each rack. Each one of these would be a rack
8 cabinet.
9 Q. And where was Dennis actually working in
10 connection with the cluster?
11 A. This was up in our -- our building is kind
12 of divided in two parts. The front section is
13 offices. This back section here is warehouse.
14 Dennis had set up a series of tables out
10:12 15 here that he worked on. He was regularly out here.
16 Q. Okay. And where did you work,
17 Mr. Venables?
18 A. Our server room was up in this area and my
19 office is right next to it.
10:12 20 So our servers were here and I was here.
21 Q. Okay. Could you just put the initials DM
22 down there.
23 And who worked in these work stations over
24 here in the warehouse, near Dennis?

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1	A. Just Dennis.	1	A. Generally Dennis was in charge of all the
2	Warren occasionally was out there working	2	programmers in the building.
3	with him.	3	Q. And who were -- can you give the identity
4	Q. And no one else?	4	of those programmers for the Court?
10:13 5	A. Right.	10:14 5	A. Upstairs area or the downstairs area?
6	Q. Did you ever go out there and work on any	6	Q. Upstairs first.
7	of those work stations?	7	A. Upstairs, we had Barjinder Bal.
8	A. Troubleshooting, helping him clone them to	8	I only remember his first name, Karthik.
9	make more of them.	9	This is current; we've had people come and
10:13 10	Q. But actually creating lines of code --	10:14 10	go over the years.
11	A. No.	11	Venkata Kalluri.
12	Q. -- did you ever do that?	12	Lalith Tenneti.
13	A. Never.	13	Q. If I could just stop you there.
14	Q. The answer was never, correct?	14	Mr. Bals and Mr. Kalluri are the same
10:13 15	A. Right.	10:14 15	people that have submitted Declarations in this case?
16	MR. FLYNN: Thank you, sir.	16	A. Correct.
17	You can resume the stand, please.	17	Q. But they never worked with Dennis down in
18	THE COURT: Are there going to be any	18	this other area you've got down below, either, did
19	additions to this drawing?	19	they?
10:13 20	MR. FLYNN: I believe so. Mr. Montgomery	10:15 20	A. They were occasionally down there. I
21	will be --	21	don't know for what.
22	THE COURT: All right. We'll leave it up	22	The upper area had glass windows so we
23	there, then, until we --	23	could see who went down to that area, and I observed
24	BY MR. FLYNN:	24	just about everybody in the building down there with
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1	Q. Where were the programmers actually	1	Dennis at one time or another.
2	working?	2	Q. But they never did any source code
3	I believe -- are these the work station	3	creation?
4	that the programmers --	4	A. For that project?
10:13 5	A. Right.	10:15 5	Q. To your knowledge?
6	Q. -- were actually working?	6	A. I have no idea what they did for him.
7	A. That section there that I have that top	7	Q. Okay. And would you continue with the
8	diagram on is actually a two-story area. The	8	identity of the programmers, please.
9	warehouse is all single-story.	9	A. Just programmers, Michael Svatek; you got
10:14 10	So some of them were on the second floor,	10:15 10	that one.
11	some were on the first floor.	11	Jessie Anderson.
12	Q. So, for example, on the video game, was	12	I believe that's all the programmers
13	that data compression-type technology?	13	upstairs. There's other people, but those are the
14	A. No, just 3-D rendering.	14	programmers.
10:14 15	Q. So eTreppid Technologies was doing	10:15 15	Q. All right. Now, so you've done -- during
16	software technology other than just data compression,	16	those first two years, did you do any work that we
17	correct?	17	would call data compression-type work?
18	A. Correct.	18	A. No.
19	MR. PEEK: Counsel, I can't see the	19	Q. Do you know of anyone who did?
10:14 20	witness.	10:16 20	A. Venkata did.
21	Thank you.	21	Q. Anyone else?
22	BY MR. FLYNN:	22	A. I'm sure others.
23	Q. And who was in charge of these programmers	23	I know him for sure; I've seen the
24	working over here?	24	programs he's worked on.
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1 Q. During those first two years, what
2 percentage of the company work, if you know, was data
3 compression-type work?
4 **A. Initially, I believe that was the majority**
10:16 **5 of what we were doing.**

6 Q. Have you ever seen any of the books or
7 records of the company?
8 **A. No.**

9 Q. Have you ever seen any of the agreements
10 between Mr. --
11 **A. No.**

12 **Well, as far as records, I have the**
13 **majority stockholder list as part of our facility**
14 **security. I have that information.**

15 Q. In your office?
16 **A. Yes.**

17 Q. Describe those records, please.
18 **A. They show who the majority shareholders**
19 **are.**

20 **For getting your facility security**
21 **clearance, you need to know if the company has any**
22 **foreign interest in the company so that we could**
23 **have -- foreign interest or influence, so the records**
24 **show -- I believe it's Friendly Capital Partners,**

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1 Q. That Mr. Milken is.
2 **A. Oh, I don't know about that.**

3 Q. Are you aware of who Mr. Milken is?
4 **A. Yes.**

10:17 5 Q. In fact, he's -- have you ever
6 participated in any discussions with Mr. Trepp about
7 Michael Milken's involvement of eTreppid Technology
8 and being a convicted felon?
9 MR. JAKOPIN: Objection, your Honor.
10 MR. FLYNN: If I can finish, your Honor.
11 THE COURT: Yeah, let him finish the
12 question. I don't know if it's objectionable or not
13 until I hear it.
14 BY MR. FLYNN:
15 Q. In being a convicted felon, and that fact
16 interfering with the government military contracts?
17 THE COURT: Wait. Hold on just a second.
18 Sit down, Counsel, just for a minute.
19 All right.
20 THE WITNESS: He's never talked to me
21 about Mr. Milken.
22 MR. PEEK: Mr. Venables, please.
23 THE COURT: Now, go ahead and ask the
24 question so I can --

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1 **and --**

2 Q. That's Mr. Trepp, also, correct?
3 **A. Mr. Trepp represents Dennis and Brenda**
4 **Montgomery, and I believe one other share -- there's**
5 **three shareholders on this as the majority**
6 **shareholders.**

7 Q. Is Wayne Primm one of those?
8 **A. He's not on the list.**

9 Q. Is Randy Halloway on that list?
10 **A. The list has Mr. Trepp personally,**
11 **Mr. Trepp representing Friendly Capital, and Dennis**
12 **and Brenda Montgomery.**

13 **Those are the three main entities on the**
14 **majority shareholders list.**

15 Q. Is Michael Milken in any of the records as
16 being shown as a shareholder of eTreppid
17 Technologies --

18 **A. Not that I know of.**

19 Q. -- that you have possession of?
20 **A. Not that I have, no.**

21 Q. Are you aware that Mr. Trepp has stated
22 that he is a shareholder of eTreppid Technology?
23 **A. Yes.**

24 **That Mr. Trepp is?**

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1 BY MR. FLYNN:
2 Q. Have you ever had any discussion with
3 Mr. Trepp about Mr. Milken being a shareholder of
4 eTreppid Technology, and that fact, because he is a
5 convicted felon at the Drexel -- during the Drexel
6 days --

7 MR. PEEK: Your Honor, this is outrageous
8 conduct. There's no question --

9 BY MR. FLYNN:
10 Q. -- of interfering with a government --
11 THE COURT: Wait, wait. Wait a minute.
12 MR. PEEK: Your Honor, there's only --
13 THE COURT: Your co-counsel is handling
14 this witness --

15 MR. PEEK: Okay.
16 THE COURT: -- so allow him to deal with
17 this issue.

18 MR. JAKOPIN: Objection, your Honor. He
19 answered the question no.

20 THE WITNESS: He's never talked to me
21 about Mr. Milken; never.

22 THE COURT: Well, I -- this is
23 cross-examination. I don't know whether there's any
24 relevance at all to this issue about the felony

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1	conviction.	1	inspection to see what storage capabilities we had.
2	I'm personally very well aware who	2	Q. Did that clearance give eTreppid the right
3	Mr. Milken is, I know what his background is, and if	3	to store any classified material?
4	we had a jury here, I'd be a little more worried	4	A. We weren't given that final permission
10:19 5	about it, but we don't have a jury.	10:21 5	yet. It said that we could but we needed further
6	I'm going to try to sort out what I think	6	inspection to inspect our storage containers, our
7	has something to do with this case, what doesn't, so	7	safes.
8	I'm going to go ahead and let you go with that just a	8	Q. So as of today's date, eTreppid has never
9	little bit, but I do want you to tie it in on a -- on	9	been given a final security clearance to store
10:19 10	relevance grounds.	10:21 10	classified material; is that correct?
11	Maybe it has to do with security	11	A. Correct.
12	clearances.	12	Q. And your explanation of the reason why is
13	MR. FLYNN: It does, your Honor, and when	13	what again, Mr. Venables?
14	Mr. Montgomery testifies, we'll go into it.	14	A. The rules state that DSS, Defense Security
10:19 15	BY MR. FLYNN:	10:21 15	Service, is in charge of granting that final storage
16	Q. In the books and records that you have, as	16	clearance. They come and inspect what our entry and
17	I understand your testimony, you only show three	17	exit procedures for the building, our alarm code
18	shareholders?	18	stuff, and also what storage containers we're using
19	A. Three majority; that's all we require for	19	and how we maintain the procedures for entering and
10:19 20	our facility clearance.	10:21 20	taking out classified material, which was part of
21	The government doesn't care about any	21	that review on December 10th, that Jay Dixon came to
22	minority shareholders, any lower than -- I forget the	22	start -- initiate.
23	number; I think it's four percent.	23	Q. All right. Let's go back to -- let's go
24	Anything lower than that, they don't care	24	back to the various technologies that you were
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1	about.	1	involved in, and I guess we're up to some time in
2	Q. Did you ever have any conversations with	2	2001, and we've got the video game technology,
3	anyone from the government about the identity of any	3	correct?
4	of the shareholders of eTreppid Technology?	4	A. Correct.
10:20 5	A. They just wanted to know who the majority	10:22 5	Q. And the other technology -- what did we
6	ones were.	6	call that, Mr. Venables?
7	Q. And you gave them --	7	A. I forgot the name of it. It was a media
8	A. Based on that, they granted us our	8	player for the Intel Home Theater System.
9	facility clearance.	9	Q. And what time in 2001 does that take us
10:20 10	Q. Okay. Explain to the Court what a	10:22 10	to?
11	facility clearance is.	11	A. That was up until 2002 before we moved to
12	A. Facility clearance is what we get as a	12	our current building.
13	collective after the key people in our company got	13	We moved to our current building in August
14	their personal clearances.	14	of 2002.
10:20 15	The key people that we've submitted were	10:22 15	Q. Okay. And what did you work on after
16	Dennis Montgomery, Warren Trepp, and myself as our	16	these other technologies that you mentioned for
17	facility security officer.	17	eTreppid Technology?
18	After us three got our clearances, they	18	A. The building we moved into had no network
19	reviewed who the shareholders were, and after that,	19	infrastructure whatsoever. I worked on setting all
10:20 20	what contract we had with the government -- you	20	that up, working with contractors to wire our
21	have -- to get a clearance, you have to have a	21	building, setting up all the network stuff.
22	contract that specifies compliance, and after that	22	We had nothing in that building, so I
23	they granted us our facility clearance, meaning we	23	worked on that.
24	can handle classified material after a further	24	Q. For how long?
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1 **A. It took about a year to get it to where it
2 is now.**

3 **Q. So during that year, did you have anything
4 to do with creating source coding for any codes for
10:23 5 eTreppid Technology?**

6 **A. On a regular basis, I dealt with Michael
7 and what he was doing, but other than that, no.**

8 **Q. Michael who?**

9 **A. Michael Svatek, working on the game
10 engine.**

11 **Q. So other than that, for another whole
12 year -- we're now up to when in 2002, would you say?**

13 **A. We're into 2003 by the time we finalize
14 our full network setup.**

15 **Beginning in 2003, I was involved with
16 doing all the purchasing and designing of the
17 hardware that he's got out there on that rack --
18 system of racks.**

19 **Q. So, again, no involvement with regard to
10:23 20 creating source coding for eTreppid Technologies?**

21 **A. No.**

22 **Q. Is there any time up to the present, since
23 your involvement in the video games, where you've
24 been involved in creating source code for eTreppid**

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1 **game?**

2 **A. No. Video compression is for playing back
3 video, such as a DVD or just a video file itself,
4 like, for example, compressing a DVD movie to fit
10:25 5 onto a CD.**

6 **Q. So you have no knowledge as to how much
7 source coding was done by eTreppid for video
8 compression technology; is that correct?**

9 **A. I've seen the various programmers and what
10 projects they're working on and --**

11 **Q. Do you --**

12 **A. -- I've dealt with that video compression
13 for the Intel Media Player.**

14 **Q. Do you know what percentage of the company
10:25 15 business that involved?**

16 **A. No idea.**

17 **Q. Do you know what percentage of the company
18 revenues that involved?**

19 **A. I have no idea.**

10:25 20 **Q. But again, you never created any source
21 coding yourself for that?**

22 **A. No.**

23 **Q. Did you ever have any access directly
24 where you looked at the source coding for video**

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1 **Technology?**

2 **A. Not since then, no.**

3 **Q. Do you have any knowledge as to what
4 percentage of the eTreppid business involved data
10:24 5 compression technology up until December of 2002?**

6 **A. I have no idea where the breakdown of
7 money came from.**

8 **Q. So you have no knowledge of even what was
9 paid for any of the projects eTreppid was working on?**

10 **A. No.**

11 **Q. Do you have any knowledge of how many
12 projects eTreppid was doing?**

13 **A. Total number, no.**

14 **I think Patty Gray, Dennis and Warren were
10:24 15 probably one the only ones -- the only three that
16 know all that.**

17 **Q. Let's call one technology data
18 compression.**

19 **You apparently never worked on any source
10:24 20 coding for data compression?**

21 **A. That's correct.**

22 **Q. We'll call the other one video compression
23 technology.**

24 **Is that basically the game? The video**

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1 **compression technology?**

2 **A. I had worked with one of the programmers
3 on the streaming of our video compressed video,
4 Lalith Tenneti, so I've seen some of the projects he
10:25 5 worked on.**

6 **And also with one of the prior employees,
7 Amit.**

8 **I forgot Amit's last name.**

9 **I've seen some of the stuff, helping them**

10 **troubleshoot, compiling stuff.**

11 **Q. Do you know how many lines of source
12 coding there are at eTreppid for the video
13 compression technology?**

14 **A. I have no idea.**

10:26 15 **Q. Do you know how many lines of source
16 coding there are at eTreppid for the data compression
17 technology?**

18 **A. No.**

19 **Q. When you gave all this direct testimony
10:26 20 and you were doing this search with all of the other
21 employees, as you put it, did you go back and look
22 for source coding for data compression or video
23 compression technology?**

24 **A. We looked for all deleted files.**

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1	Q. Did you look for any source coding for	1	I'm not sure that I have the understanding
2	data compression technology?	2	yet to make a determination as to whether or not it's
3	A. You can't do a search for deleted files by	3	confusing. I'm not sure that that's an objection
4	what kind of technology it is.	4	that I would sustain, anyway.
10:26 5	Q. Is there any data compression technology	10:28 5	So I'm going to allow this testimony for
6	source coding at eTreppid today, if you know?	6	whatever it's worth so it helps me get educated about
7	A. I don't know what files we've recovered.	7	what the issues in this case are.
8	We're still in the process of recovering	8	I'm beginning to see that there's an issue
9	deleted files; we haven't gone through them all.	9	between source code, singular, source code, plural,
10:27 10	Q. So you could -- as you sit here today,	10:28 10	and whether we're talking about lines of source code
11	there could be tens of thousands of source codes --	11	and lines of data codes, as opposed to separate
12	MR. JAKOPIN: Objection.	12	codes, but I want to learn a little bit more about
13	BY MR. FLYNN:	13	this, and so allowing me to listen to this helps me
14	Q. -- for data compression technology in the	14	to do that.
10:27 15	computers at eTreppid that you haven't even checked	10:29 15	So if you'd indulge me a little bit,
16	yet; is that correct?	16	please, I'd like to hear a little more about this.
17	MR. JAKOPIN: Objection; using "source	17	BY MR. FLYNN:
18	codes" is improper, foundation.	18	Q. Mr. Venables, we've established that there
19	THE COURT: I'm not sure I understand the	19	are, I think as you put it, hundreds of source codes
10:27 20	objection.	10:29 20	for the video game technology that you worked on that
21	THE WITNESS: He keeps using the term	21	are still at eTreppid; is that correct?
22	wrong.	22	A. We've recovered hundreds of files that
23	THE COURT: All right. Rephrase your	23	were deleted. What the contents of those files or
24	question and then we'll go from there.	24	what -- if there's actually any codes, we know that
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1	BY MR. FLYNN:	1	some files have zero contents because they were wiped
2	Q. In the computers, as you sit here today,	2	clean.
3	at eTreppid Technology, is there source coding for	3	So there's a file name but zero code is
4	data compression technology?	4	within that file.
10:27 5	A. I have no idea what we've recovered.	10:29 5	Q. We're just talking about the video game
6	Q. You don't know?	6	now.
7	A. It could be.	7	A. The video game?
8	We haven't gone through it all. We've	8	Q. Yeah, just the video game.
9	actually -- working with law enforcement officials,	9	A. We haven't --
10:27 10	they don't want us to tamper with any more of the	10:29 10	Q. Are there hundreds of source codes just on
11	evidence of trying to recover this.	11	the video game, as you testified before, that are
12	Q. So as you sit here today, since you	12	still on the eTreppid --
13	haven't gone through it all, there could be tens of	13	A. That's like saying there's hundreds of
14	thousands of source codes for data compression	14	tomatoes in the video game.
10:28 15	technology alone on the eTreppid computers; is that	10:29 15	What you're saying doesn't make any sense
16	correct?	16	in any way.
17	A. That doesn't really make sense.	17	THE COURT: Well, hold on just a second.
18	MR. JAKOPIN: Objection; confusing.	18	THE WITNESS: We have all --
19	THE WITNESS: That doesn't really make	19	THE COURT: Stop.
10:28 20	sense --	10:30 20	THE WITNESS: -- the video --
21	THE COURT: Well, I'm not sure --	21	THE COURT: Stop.
22	THE WITNESS: -- what you're saying, but	22	THE WITNESS: -- game files.
23	maybe you can clarify it.	23	THE COURT: When I say hold on, I mean
24	THE COURT: Hold on. Stop. Stop.	24	stop.
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	93		95
1	You got it?	1	A. We've looked all over. We looked on every
2	THE WITNESS: Okay.	2	machine in the building.
3	THE COURT: All right. What I would like	3	Q. For video compression?
4	both of you to do is to try to allow the other one to	4	A. By video compression, I assume that you're
10:30 5	finish. This is not like normal conversation.	10:32 5	talking about the video Codec that we use.
6	We've got a court reporter here that's got	6	There's various names for it. ETVC is one
7	to get down what's being said, and I know that it's	7	of them. ERVP is another one. I don't remember all
8	not an easy thing to do if you're not used to it.	8	of them, but we haven't found any of those on
9	So, please, if he's asking a question, let	9	anybody's work stations or the server.
10:30 10	him finish it. If he's making an answer, let him	10:32 10	Q. Have you made any effort to recover those
11	finish it.	11	files?
12	And I'm sorry for the interruption, but I	12	A. Yes, I have.
13	just want to try to deal with this issue right now.	13	Q. What did you do?
14	So go ahead, please.	14	A. From the SRC SERVER, we're running the
10:30 15	MR. FLYNN: Thank you, your Honor.	10:32 15	program made by Executive Software called Emergency
16	BY MR. FLYNN:	16	Undelete. It's made for recovering deleted files.
17	Q. Mr. Venables, let's try it this way.	17	Q. And have you recovered any of them?
18	You say you have found deleted files of	18	A. I've got some folders with the names of
19	source code; Is that correct?	19	the video Codecs.
10:30 20	A. Correct.	10:33 20	We haven't gone through all of them yet.
21	Q. Have you found deleted files of source	21	It's still running. It takes weeks and weeks to
22	code on your video game technology?	22	piece these pieces together.
23	A. I said in the beginning, those files were	23	Q. That's how I understand it.
24	never deleted.	24	How many files have you recovered to date
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	94		96
1	Q. Thank you.	1	and how long -- how many files have you recovered to
2	Have you found deleted files of source	2	date on the video compression technology?
3	code on data compression technology?	3	A. I have no idea. I just have a total
4	A. I have found deleted folders for a program	4	number of gigabytes that I've recovered.
10:31 5	called ET Adaptive, which I believe is the data	10:33 5	Q. What is that?
6	compression program.	6	A. About 40 to 50 gigabytes have been
7	Q. What makes you believe that?	7	recovered.
8	A. Because I asked the programmer, Venka, who	8	Q. How long has that recovery program been
9	was working on it what it's used for and he said data	9	running?
10:31 10	compression.	10:33 10	A. Since January 12th.
11	Q. And when you say you found deleted files,	11	Q. And how long will it -- it will take weeks
12	you found files -- you saw something that showed you	12	longer to continue to run it to recover files; is
13	that the files were once there and now they're not	13	that correct?
14	there? Or did you recover them?	14	A. By the current rate, probably.
10:31 15	A. Some locations, we didn't recover them.	10:33 15	Q. Okay. And is that technology, the
16	Like the programmers' machines, they	16	recovery technology going to enable you to recover
17	recovered file names but zero contents in the files.	17	all of the source codes on the video compression
18	On the server, I've recovered the folders	18	technology?
19	and some of the files but not all of the files.	19	A. I have no idea.
10:32 20	Q. Okay. On video compression technology	10:34 20	Q. You don't know?
21	software, have you found any files at eTreppid -- on	21	A. No.
22	eTreppid computers that were never deleted?	22	Q. How many source codes, what you describe
23	A. No.	23	as source codes have you recovered to date on the
24	Q. Have you looked?	24	video compression technology?
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1 **A. I have no idea.**

2 **I just have the recovered folders and**
 3 **files, and nobody has access to it right now. It's**
 4 **not even plugged into our network.**

10:34 5 **Q. Why not?**

6 **A. We don't want to corrupt anything. We**
 7 **want to preserve the state that it was in at the**
 8 **point of deletion.**

9 **Q. Just yes or no.**

10:34 10 Did you ever have a conversation with
 11 Mr. Trepp instructing you to go into Mr. Montgomery's
 12 work station and try to recover classified
 13 information or classified source codes?

14 **A. He asked me to recover what files I could**
 10:34 15 **find, in particular the e-mail files which I did**
 16 **recover.**

17 **Q. What did you do to try to recover?**

18 **A. I ran the same program I already talked**
 19 **about, Emergency Undelete.**

10:35 20 **Q. And just yes or no.**

21 Did you ever have a conversation with
 22 Mr. Montgomery about a certain governmental agency
 23 requiring intrusion devices on all of the equipment
 24 Mr. Montgomery was working on?

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1 **A. Never.**

2 **Q. Do you know what an intrusion device is?**

3 **A. Yes. I've got one on our Cisco router.**

4 **Q. What is an intrusion device?**

10:35 5 **A. It detects if somebody is trying to get**
 6 **into the thing, and it will usually log it; try to**
 7 **block it and log it.**

8 **Q. Does -- so as I understand it, you have no**
 9 **knowledge of whatever governmental interaction**

10:35 10 Mr. Montgomery had to establish intrusion devices
 11 that would self-destruct any information on
 12 Mr. Montgomery's equipment?

13 **A. I have no knowledge of any of his**
 14 **interactions.**

10:36 15 **I know what's on all the machines in the**
 16 **building.**

17 **Q. Do you know whether or not there is an**
 18 **intrusion device on Mr. Montgomery's workplace --**

19 **A. No, there's no such --**

10:36 20 **Q. -- computers, that if anyone tries to**
 21 **access without certain codes, self-destructs all the**
 22 **material in the computers?**

23 **A. There's no such thing.**

24 **Q. To your knowledge?**

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1 **A. To my knowledge and others in the building**

2 **that I've consulted: Jessie Anderson, Lalith**
 3 **Tenneti.**

4 **Q. Let's talk about audio compression**
 10:36 5 **technology.**

6 **Did eTreppid do audio compression**
 7 **technology?**

8 **A. Yes.**

9 **Q. Do you have any knowledge of what**
 10:36 10 **percentage of the business was audio compression**
 11 **technology?**

12 **A. I have no idea.**

13 **Q. And I take it you don't know what kind of**
 14 **revenue the audio compression technology generated?**

10:37 15 **A. No.**

16 **Q. Did you ever do work on audio compression**
 17 **technology?**

18 **A. No.**

19 **Q. In the last several weeks, have you made**

10:37 20 **an effort to examine the computers of eTreppid to**
 21 **determine whether any audio compression technology**
 22 **software files are present or not present?**

23 **A. We've looked for what we call ETAC,**
 24 **eTreppid Audio Codec or compression, and none of our**

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1 **programmers' work stations, none of the machines out**
 2 **in the warehouse have it.**

3 **I believe I've recovered a folder or two**
 4 **from SRC SERVER, but I don't know what the contents**
 5 **are.**

6 **Q. Are you running any recovery technology**
 7 **for any audio compression software?**

8 **A. We're recovering any and all files that we**
 9 **can find on SRC SERVER that have been deleted.**

10:38 10 **It doesn't look for any particular kind of**
 11 **file; it just looks for any deleted files.**

12 **Q. So has any -- have any source code files**
 13 **been recovered, if you know, in audio compression**
 14 **technology software?**

10:38 15 **A. There's a couple of folders that are for**
 16 **ETAC.**

17 **Q. Okay. And that's currently on the**
 18 **company's premises?**

19 **A. Yes.**

10:38 20 **Q. Now, I'm just going to use three different**
 21 **descriptive terms and I'll just ask you some**
 22 **yes-or-no questions. Okay?**

23 **A. Okay.**

24 **Q. Object tracking.**

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	101		103
1	Do you know, yes or no, whether eTreppid	1	per day?
2	Technologies has any government contracts with regard	2	A. I have no idea what the -- a lot of it is
3	to object tracking?	3	editing pre-existing lines, not generating new lines.
4	A. Yes.	4	So I would say the majority of the days
10:38 5	Q. Have you ever done any computer	5	are spent on tweaking and modifying existing lines.
6	programming on object tracking?	6	Q. I'm going to use another descriptive term,
7	A. No.	7	and I'll just ask for yes or no.
8	Q. Have you ever had access to any of the	8	To your knowledge, did eTreppid Technology
9	source codes for object tracking?	9	have any classified government contracts with regard
10:39 10	A. No.	10	to pattern recognition technology?
11	Q. Who at eTreppid has had access to the	11	A. We only have one classified contract, to
12	source codes for object tracking?	12	my knowledge, and that's -- that's in our file on
13	A. A person I mentioned before, Krishna.	13	record.
14	Zehang Sun is working on it with a team of	14	Q. So you don't even -- do you know what
10:39 15	people downstairs, in our downstairs area which I	15	pattern recognition technology is? Yes or no?
16	haven't mentioned yet. We have another ten people	16	A. Yes.
17	down there. All of them -- not all of them, but a	17	Q. And to your knowledge, you don't even --
18	majority of them are working on that stuff.	18	you have no awareness, as you sit here today, of what
19	Q. Under Mr. Montgomery's supervision?	19	eTreppid was doing on pattern recognition?
10:39 20	A. Yes.	20	A. I have bits and pieces of what I've seen
21	Q. And is it true to say that each of these	21	going on in the building, but I don't have the full
22	individuals has only had bits and pieces, and only	22	picture.
23	Mr. Montgomery has the full picture of what's being	23	Q. Do you have any idea how many source codes
24	worked on?	24	have ever existed on pattern recognition technology?
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	102		104
1	A. I have no idea how he delegated.	1	A. No, I have no idea.
2	Q. That's all classified; is that correct?	2	Q. Do you have any idea where any of those
3	A. How he delegates isn't classified; only	3	source codes could ever be found anywhere?
4	the classified material.	4	A. Well, if we go by what Dennis told me, all
10:40 5	Q. The work being done is all classified?	5	the source code is on SRC SERVER. I know what the
6	A. They can work on all kinds of program, but	6	contents of the SRC SERVER were by file, number of
7	the classified material which we receive from the	7	files, and total file size.
8	government agency is classified.	8	Q. So this is just based on what
9	So they can program on whatever they want,	9	Mr. Montgomery told you?
10:40 10	but they can't handle -- they can't see classified	10	A. Right.
11	material because none of them have clearances.	11	If he said it's not there, if he's saying
12	Q. Only Mr. Montgomery?	12	it's not there, then I would have no idea.
13	A. Correct.	13	Q. Have you ever seen any of the contracts
14	Well, we have -- six people have	14	Mr. Trepp and Mr. Montgomery signed with a certain
10:40 15	clearances in the building.	15	10:42 governmental agency with regard to either object
16	Q. So to your knowledge, were they doing line	16	tracking or pattern recognition technology?
17	coding?	17	A. If you're talking about special access
18	A. Yes, they were.	18	program stuff, no, I don't have any knowledge of it.
19	Q. Bits and pieces?	19	Q. So you have no knowledge of the terms of
10:40 20	A. They were working on whatever; I have no	20	any of those contracts?
21	idea what they were doing exactly.	21	A. No.
22	Q. On average, how many codes can a	22	Q. And with regard to Mr. Montgomery's
23	programmer do a day?	23	supervision techniques of the people working under
24	How many line codes could a programmer do	24	him, the programmers, you have no knowledge of what
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	105		107
1	he was allowed to share and what he was not allowed	1	A. Mr. Montgomery had me make a program that
2	to share in order to get the work done; is that	2	would delete all the hard drives in all the computers
3	correct?	3	we gave back to them.
4	A. I have no idea.	4	Q. So it's your testimony today that all
10:43 5	Q. I'm going to use another term, and just	10:45 5	those source codes at eTreppid were taken by the
6	answer yes or no, please.	6	government?
7	Facial recognition technology. Have you	7	A. No. We ran Active Kill, I believe that
8	ever heard that term at eTreppid Technologies?	8	one was called. It's a DOD certified program for
9	A. Yes. I've seen the work in progress being	9	wiping all those hard drives.
10:43 10	done by the people downstairs.	10:45 10	Those were all given back clean slate.
11	Q. Have you ever seen the source codes for	11	Q. So what was left?
12	facial recognition technology?	12	THE COURT: Is this a good time to take a
13	A. No, I haven't.	13	little break?
14	Q. Who was the individual at eTreppid that	14	MR. FLYNN: Sure.
10:43 15	was doing the work on facial recognition technology?	10:45 15	THE COURT: We've been going not quite two
16	A. Zehang Sun's team. He has a team of	16	hours.
17	people working underneath him.	17	MR. FLYNN: Just one question, your Honor?
18	Q. Under the supervision of Mr. Montgomery?	18	THE COURT: Sure. Go ahead.
19	A. Right.	19	BY MR. FLYNN:
10:44 20	Q. And have you, in any recovery program	10:45 20	Q. So to your knowledge, what is left at
21	you've been implementing, made an effort to recover	21	eTreppid with regard to the source codes for that
22	any source codes for facial recognition technology?	22	technology that was wiped out?
23	A. As I said, we're not looking for any -- we	23	A. I have no idea what source code was used
24	can't look by any particular technology, just by	24	for that project.
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	106		108
1	file, deleted file.	1	MR. FLYNN: Thank you, your Honor.
2	Q. So you just went on all of	2	THE COURT: All right. Let's be in recess
3	Mr. Montgomery's computers, some of which are, in	3	until -- let's make it five after 11:00.
4	fact, a certain governmental agency's computers; is	4	(Recess taken.)
10:44 5	that correct?	11:04 5	THE COURT: Please be seated.
6	MR. PEEK: Counsel, I can't see the	6	MR. FLYNN: Thank you, your Honor.
7	witness.	7	THE COURT: Oh, by the way, before you
8	THE WITNESS: None of those machines out	8	start, I do have an order permitting you to practice.
9	there have been certified for classified material, if	9	I'll file that in with the clerk.
10:44 10	that's what you're asking.	11:04 10	And then when you conform the copies, give
11	BY MR. FLYNN:	11	them the copies, too, please.
12	Q. As you sit here today, are you aware that	12	MR. FLYNN: Thank, your Honor. It's nice
13	a certain governmental agency brought in computers?	13	to be legal for a change.
14	A. Yes.	14	THE COURT: Doesn't hurt.
10:44 15	Q. Have you attempted to access those	11:04 15	Go ahead.
16	computers?	16	BY MR. FLYNN:
17	A. They took those computers back away.	17	Q. Mr. Venables, how many hard drives are
18	Q. When did they do that?	18	there at eTreppid Technology?
19	A. Last year sometime, I believe. Last	19	A. I don't know. I -- since I purchased them
10:45 20	spring.	20	all, I should know an accurate number, but we've
21	Q. And they took the source codes with them?	21	bought many, many hundreds.
22	A. I don't believe so. They just took	22	I would say, total, we probably have about
23	hardware.	23	a thousand, but no more than 2000.
24	Q. Were the source codes on the hardware?	24	Q. Hard drives?
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	109		111
1	A. Yeah. Correct.	1	code and those aren't deleted.
2	Q. How many files are on those hard drives?	2	Q. Now, perhaps it was an oversight of mine,
3	A. We've got --	3	but as I understand it, there is a fairly significant
4	Q. Your best estimate?	4	little structure right there on eTreppid premises, is
11:05 5	A. We've got plenty that only have a couple	11:07 5	there not?
6	of files in them in our file cabinets in the	6	A. In the downstairs -- center of the
7	warehouse.	7	downstairs area, our little private room?
8	Q. Collectively, how many would you estimate?	8	Q. Yes.
9	Or can you?	9	Could you -- would you indulge me and put
11:05 10	A. I can't estimate.	11:07 10	it where you think it should go, the private room?
11	Q. How many computers do you have at eTreppid	11	A. It's underneath -- say this is the rest of
12	Technology?	12	the building here; it's about located center
13	A. On my network, I have less than a hundred,	13	downstairs.
14	but we've got plenty of other ones that are not in	14	Q. Have you ever been in the private room?
11:05 15	use or --	11:08 15	A. Yes.
16	Say, total, 200 or less computers.	16	Q. How many times?
17	Q. If I suggested to you there were over	17	A. In the past two weeks, I've spent a lot of
18	150 million files on eTreppid Technology computers,	18	time there.
19	would you disagree?	19	Q. Before the past two weeks, how many times
11:06 20	A. No.	11:08 20	were you in the private room?
21	Q. But you don't know?	21	A. Very little.
22	A. I would say --	22	Q. Who had access to the private room at
23	Q. You can't give us your best estimate?	23	eTreppid?
24	A. Since I've seen a lot of the files we've	24	A. Warren and Dennis and Patty and some
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	110		112
1	been going over the last couple of weeks on most of	1	outside government people.
2	these hard drives in the warehouse and what have you,	2	Q. Just if you can give me a number, how many
3	a lot of them have individual frames of video, so a	3	of those outside government people that had access to
4	single frame for every second, or less than 30 frames	4	the private room have you ever dealt with?
11:06 5	a second they were recorded at, so your number of a	11:08 5	A. I dealt with two of them a lot recently,
6	million or more would be accurate because it contains	6	and I've dealt with them in the past.
7	a lot of these video frames.	7	Other than that, we had some with the
8	Q. Well, 150 million?	8	special access program. I dealt with all of them
9	A. Right. That's --	9	regularly.
11:06 10	Q. How many of the 150 million have you	11:09 10	I had to know who they were coming and
11	checked to date?	11	going out of the building. They can't just get to
12	A. In the past two weeks, since the 10th,	12	that room without coming through our -- one of our
13	I've looked at just about every hard drive in the	13	outside doors.
14	building.	14	Q. These government people you've dealt with
11:07 15	Q. How many files have you checked to date,	11:09 15	in the last two weeks, who contacted them?
16	of the 150 million?	16	Did you?
17	A. I haven't opened every single file. I'd	17	A. No.
18	say I'd open a folder and it has like a thousand	18	Q. Who at eTreppid do you know contacted
19	frames of something, I'll just look at the first one	19	them?
11:07 20	and then go to something else.	11:09 20	A. Jay Dixon actually is the guy with DSL. I
21	Q. So of the 150 million files, can you tell	21	brought him in there.
22	the Court today how many are still on the eTreppid	22	But outside that, there are government
23	computers that have never been deleted?	23	people that Warren contacted.
24	A. I'd say about 80 percent are not source	24	Q. Who --
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	113		115
1	Strike that.	1	computer, same exact cabinets.
2	You personally contacted Jay Dixon?	2	BY MR. FLYNN:
3	A. Well, it was -- we're on a regular contact	3	Q. The question again is, who owns those
4	basis since he's our representative with our facility	4	computers?
11:09 5	clearance.	11:11 5	A. I have no idea.
6	Q. What is in the private room?	6	I know I purchased all of them and
7	A. A couple of tables, a couple of computers,	7	eTreppid paid for all of them. I don't know if they
8	and a couple of secure containers; safes.	8	were paid for through outside contracts. I don't
9	Q. And have you made an effort in the last	9	know.
11:10 10	several weeks to access those computers?	11:11 10	Q. Do you know whether there are any source
11	A. The -- one of them wasn't even plugged in.	11	codes in those computers?
12	The other one was running and I saw what	12	A. The surveillance computers don't have
13	was on it.	13	anything, and -- don't have anything except for video
14	Q. What was on it? Just in terms of a	14	recording software, which is outside third-party.
11:10 15	general description?	11:12 15	This bank of computers has nothing on them
16	A. Basically just operating system and	16	anymore. Warren and I went and looked on each one
17	Microsoft Office and access to the Internet; nothing	17	and there's nothing on any of them.
18	else.	18	Q. Who --
19	Q. Okay. Did you make any effort to access	19	A. Just operating system.
11:10 20	any of the files on either of these two computers?	11:12 20	Q. Who else was in the room when you tried to
21	A. No. I just saw what was on them.	21	look on those computers?
22	I connected one of them to the Internet.	22	A. Just Warren and me.
23	Q. Did you bring Mr. Dixon into that room?	23	Q. And you found nothing?
24	A. He requested to go there to see where our	24	A. That's correct.
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	114		116
1	containers were.	1	Q. What did you do to try to access any of
2	Q. Now, I believe you had previously	2	the source codes in those computers?
3	testified that these computers down here belong to	3	A. We just logged on and looked to see what
4	eTreppid?	4	was on the drives and there was nothing; just
11:10 5	A. I'm aware that some of them were paid for	5	operating system.
6	by various government agencies; I don't know which	6	Q. And every single file on all 30 computers
7	ones belong to us, which ones don't.	7	had nothing?
8	Q. Just -- did you testify before the break	8	A. We do a regular partition of drive space,
9	that these belong to eTreppid?	9	so the space where data is kept, the "E" partition
11:11 10	A. I don't believe I said that.	11:12 10	had nothing on it; zero files.
11	Q. Okay. How many computers are there in	11	Q. Now, this 80 percent of the files, the
12	this bank here next to Mr. Montgomery's work station?	12	150 million files that are still at eTreppid.
13	A. Currently, there's like 30 or less.	13	A. Uh-huh.
14	Q. And do you have any knowledge of who owns	14	Q. How many of those have source codes?
11:11 15	those 30 or less computers?	11:13 15	A. None of them. They're all sample test
16	A. There's two banks, actually.	16	files.
17	MR. PEEK: Counsel, I can't see the	17	Q. I believe you testified that the game
18	witness.	18	engines for your video program, there were about a
19	THE WITNESS: There's two banks.	19	hundred source code files still at eTreppid, correct?
11:11 20	The one bank I'm describing there is the	11:13 20	A. On Michael's machine.
21	one that Dennis worked on regularly. There's another	21	These aren't any of the other drives I've
22	bank that's just along the same wall that had all our	22	looked throughout the building.
23	security cameras hooked -- connected to it.	23	Q. Now, I understand that, but overall in the
24	They're the same kind of -- same exact	24	computers, there's about a hundred source codes just
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1	for the video games that are still there?	1	SRCSERVER. The one called ET Latest was where all of
2	A. Two hard drives: My machine and Michael's	2	the source code, except for the game engine, was
3	machine.	3	stored.
4	Q. And --	4	The game engine, Michael and I kept as a
11:13 5	A. I believe there might be a couple in the	11:15 5	separate backup. We didn't -- since it only involved
6	SRCSERVER still.	6	he and I, it was only he and I that kept backups of
7	Q. A copy on the SRCSERVER?	7	it, and Dennis was agreeable with this.
8	A. Correct.	8	All the rest of the source code was kept
9	Q. Let me show you your Declaration, signed	9	under this ET Latest folder and ET Development
11:13 10	under the penalties of perjury. It was filed in this	11:16 10	folder.
11	case.	11	Those folders were deleted, completely
12	MR. FLYNN: On the copy I have, your	12	deleted out; nothing existed underneath those.
13	Honor, there's no date on it, it's blank, but there's	13	Q. But since you were never given prior
14	a signature, but it's among the documents that were	14	access, as for the source codes for object tracking,
11:14 15	filed to support the TRO.	11:16 15	pattern recognition, and face recognition, you
16	THE COURT: All right. Go ahead. I've	16	wouldn't even know what source codes to look for,
17	got it.	17	would you?
18	MR. FLYNN: You've got it, your Honor?	18	A. I don't know if they were ever there. I
19	BY MR. FLYNN:	19	wouldn't know. I don't know what the actual programs
11:14 20	Q. Did you prepare this Declaration?	11:16 20	were called.
21	A. Yes.	21	There's a couple hundred different
22	Q. Did you, yourself, personally type it up?	22	projects underneath that, that were underneath that
23	A. No.	23	ET Latest folder.
24	Q. Did you prepare it in conjunction with	24	Q. So, again, you don't know whether they
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1	counsel for eTreppid?	1	were ever there, correct?
2	A. Yes.	2	A. Correct.
3	Q. Now, you say in paragraph 11, page three,	3	Q. You don't know whether the government took
4	bottom of the page.	4	them, correct?
11:15 5	"From this check" --	11:16 5	A. Correct.
6	This was after you returned from vacation.	6	Q. And if they were ever there, you have no
7	You can read along with me.	7	knowledge of how they ever, at some point, were not
8	A. Okay.	8	there?
9	Q. "From this check, I determined that all of	9	A. Well, if they were never there, I have no
11:15 10	the eTreppid source code stored on each of these	11:17 10	idea if they disappeared, correct.
11	servers had been deleted."	11	Q. Right.
12	A. Right.	12	If the assumption is at some point they
13	Q. Is that truthful?	13	were there, without using the word deleted, you have
14	A. It's a little bit of an overstatement	14	no knowledge of how, at some point, they were there
11:15 15	since the game engine, there's a copy of the game	11:17 15	and then not there?
16	engine probably still there.	16	A. I could only tell you what was there based
17	Q. And how much -- how many of the files have	17	on what I'm recovering.
18	you not even checked yet?	18	Q. And you were never given access --
19	A. The rest of the folders were completely	19	Strike that.
11:15 20	deleted.	11:17 20	You never had a conversation with
21	If I could explain the way the structure	21	Mr. Montgomery about the methodology of the intrusion
22	of the hard drive is.	22	detection devices that the government wanted to put
23	Q. Sure.	23	on these computers and these computers, did you?
24	A. We have four main folders on that	24	A. No.
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1	MR. FLYNN: And for the record, when I	1	A. He had his hard drive taken away from him.
2	said these computers, I was referring to the 30 or so	2	Q. By who?
3	computers next to Mr. Montgomery's work station and	3	A. He said by Dennis.
4	the two computers in the so-called private area.	4	Q. So right now, this individual has no hard
11:18 5	THE COURT: In Exhibit 1?	11:19 5	drive?
6	MR. FLYNN: On Exhibit 1.	6	A. He had his work-in-progress hard drive
7	Thank you, your Honor.	7	removed -- the removable drive taken out. His
8	BY MR. FLYNN:	8	operating system drive is in there.
9	Q. Who were the programmers downstairs that	9	Q. Were there any files on that?
11:18 10	you referred to?	11:20 10	A. No.
11	A. You want the list by name?	11	Q. Who is the next individual?
12	Q. Yes.	12	A. Not that I know of. Not that I know of.
13	A. Krishna Tangirala that I mentioned before.	13	The next one in the room is -- I only
14	"Chu" --	14	remember his first name, Yong Mian.
11:18 15	Q. Are his files missing?	11:20 15	Q. Were any of his files missing?
16	A. Yes. His hard drive had a completely new	16	A. I don't know.
17	hard drive when I came back from my trip.	17	I didn't -- half of the people downstairs,
18	Q. And the next one?	18	I only talked to maybe three of them. The rest of
19	A. Chucal Huang.	19	them were spoken to my Jessie and Patty.
11:18 20	Q. Are his files missing?	11:20 20	Q. How many people are there downstairs?
21	A. He's working on something that I don't	21	A. There are three more, in addition to the
22	even know what it is, so I couldn't tell you.	22	ones I've mentioned.
23	Some other people checked his machine; I	23	Q. So since you've never spoke to them, you
24	didn't.	24	don't know whether any of their files are missing,
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1	Q. But you don't know whether this	1	either?
2	individual's files are missing or not?	2	A. I only know what I was told by the others
3	A. No, I can't say for sure.	3	who checked their computers.
4	Q. Who is the next programmer?	4	Q. You don't personally know?
11:18 5	A. Suchita Samant.	11:20 5	A. Right.
6	Q. Are his files missing?	6	Q. You mentioned something about a law
7	A. That's a lady.	7	enforcement person coming to eTreppid?
8	She has reported to somebody else besides	8	A. No, I said law enforcement told me not to
9	me, as well.	9	run the machines anymore, some of the machines that I
11:19 10	Q. So you don't know?	11:21 10	was running recovery on.
11	A. I don't know.	11	They never came to the building.
12	Then --	12	Q. So you had a telephone conversation with
13	Q. When you say "all" in your Declaration,	13	this person?
14	were you referring to their files, too?	14	A. I went to go meet him outside the
11:19 15	A. I was talking about the two servers I had	11:21 15	building.
16	under my control.	16	Q. Who is this law enforcement person?
17	Q. And, of course, you never had under your	17	THE WITNESS: Am I supposed to say?
18	control the 30 or so computers next to	18	MR. PEEK: Your Honor, the law enforcement
19	Mr. Montgomery's work station on Exhibit 1 and the	19	individuals have asked us not to identify that there
11:19 20	private area; is that correct?	11:21 20	is ongoing investigation, so he's a little reluctant
21	A. Correct.	21	to say that.
22	Q. And who is the next individual?	22	THE COURT: Well, you know --
23	A. Zehang Sun.	23	MR. PEEK: So I know this is sealed, so --
24	Q. Were his files missing?	24	but they are concerned.
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1	THE COURT: Well, I think that -- I mean,	1	would be here, or the U.S. Attorney's office would be
2	one of the things that I was going to address here	2	here, or we would have a court order from some
3	before we took our noon recess is this whole issue of	3	federal government or agency directing me with regard
4	classified information, what level of classification	4	to how far this process could go.
11:21 5	we're talking about, and frankly, Mr. Flynn, I	11:23 5	Until I get that, then any question that's
6	thought I heard you say, and I made a note of it,	6	asked is going to be answered, so --
7	that there's going to be a certain point at which we	7	MR. PEEK: Your Honor, this was just
8	need to have this private meeting, after which this	8	related to law enforcement issues; this wasn't
9	whole matter is going to or may go to Federal Court.	9	related to the Department of Defense.
11:22 10	MR. FLYNN: Yes, your Honor.	11:24 10	THE COURT: Well, I -- whatever it is,
11	THE COURT: Am I mistaken about that?	11	until somebody cites me to a statute or until
12	MR. PEEK: Well, that's what he said; I	12	somebody gives me a court order that says this stuff
13	don't think it's going to go to Federal Court.	13	can't be discussed, then when a question is asked,
14	THE COURT: I know, but let me hear --	14	I'm going to order it to be answered.
11:22 15	MR. FLYNN: No, your Honor, you're not	11:24 15	MR. PEEK: We're happy to let him answer,
16	mistaken and, yes, your Honor, we are going to reach	16	your Honor.
17	that point.	17	THE COURT: So --
18	I've now learned from this witness that he	18	MR. PEEK: I just was --
19	doesn't even know five percent enough of what we're	19	THE COURT: But back to my -- my question
11:22 20	talking about to testify about it, and the only one,	20	is, is there someone at the Department of Defense or
21	probably, is Mr. Montgomery.	21	the other federal agency with whom I should have a
22	Mr. Trepp apparently doesn't know, either.	22	discussion about what should go forward in this case?
23	So at some point, Mr. Trepp is going to	23	And if so, I would ask you to have that
24	have to be -- Mr. Montgomery is going to have to be	24	individual contact me or to do something, because I'm
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1	on the witness stand and he's going to have to go at	1	not going to have secret meetings and continue the
2	least to December '02 -- and I'll give you a copy of	2	case and do all this other stuff unless I have a
3	this chronology -- and we're going to reach that	3	basis to do that.
4	point at that time because I was wondering if,	4	If I do, be happy to do it, but I don't.
11:22 5	frankly, if this individual knew enough --	11:24 5	MR. PEEK: Your Honor, may I be heard on
6	THE COURT: Well, I guess --	6	this because --
7	MR. FLYNN: -- and he doesn't.	7	THE COURT: Yeah, yeah.
8	THE COURT: Well, I guess there's --	8	MR. PEEK: -- I think what's happening is
9	Let me finish this conversation here.	9	that you're being given half of the story.
11:22 10	What I'm looking at is a couple of things.	11:24 10	The source code is a code that was being
11	One, I've certainly enjoyed your company,	11	asked by the government under contract of eTreppid to
12	gentlemen, very much, and I enjoy the issues; it's	12	develop that would do certain things, pattern
13	kind of an interesting case, but if this case is	13	recognition, anomaly detection, those kinds of -- it
14	going to go somewhere else, then I don't want to sit	14	would perform those functions in an executable
11:23 15	here and go through a half a day or a day of	11:25 15	format.
16	testimony about things that, you know, I'm not going	16	The Department of Defense provided to
17	to be able to ultimately decide.	17	eTreppid certain classified material -- and I
18	Secondly, if there are things that are	18	mentioned this to you the other day -- in the form of
19	classified or potentially classified, I don't have	19	video, and you might can imagine what that is -- to
11:23 20	enough understanding about those to make any kind of	20	try to see if the source -- if the code could
21	ruling whatsoever on it.	21	actually operate and make pattern recognition and
22	Thirdly, I would assume, and I don't know	22	anomaly detection and facial recognition and object
23	this, but I would assume that if the federal	23	detection.
24	government had a concern, the federal government	24	But the source code itself is not
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1	classified. It is not a classified piece of --	1	then, I guess, if they -- I mean, if there's some
2	Well, it's not classified in any way.	2	statutory authority that we're not supposed to
3	It's just the information given to eTreppid that was	3	proceed with this thing, then I need to see it.
4	classified on which the source code would operate.	4	If they don't want me to proceed with
11:25 5	Now, some of those videos, there's a	11:28 5	this, then they need to tell me that. If it's so
6	concern about where they are. So the OSI, as part of	6	secret that they can't tell me that, then we're just
7	the Department of Defense, has been investigating	7	going to go ahead.
8	eTreppid to find out what has happened to them, but	8	MR. PEEK: We want you to proceed, your
9	you're being sort of given this impression that there	9	Honor. We'll tell you what the source code is --
11:26 10	is something out here that in the national security	11:28 10	THE COURT: Well --
11	interest that we shouldn't be talking about, and	11	MR. PEEK: -- as we go through the
12	that's not the case.	12	process.
13	If it were the case, you would have heard	13	We have just started our case, we are only
14	from the federal government, you would have heard	14	one witness into it, it is almost noon --
11:26 15	from the United States District Court, you would have	11:28 15	THE COURT: Right.
16	even seen a motion to stay this proceeding. We would	16	MR. PEEK: -- and I would ask that we
17	address that in an abstention issue as to whether	17	proceed expeditiously because you told us we only had
18	they were or were not.	18	today. This is not a mini-trial or trial on the
19	So I only raised the point about Sloan's	19	merits.
11:26 20	testimony, Mr. Venable's testimony, because the law	11:28 20	THE COURT: I understand.
21	enforcement had asked not to disclose that there was	21	I mean, here is my problem and I hope you
22	the subject of an ongoing criminal investigation.	22	can understand and appreciate that.
23	That's the only reason I brought it up.	23	It's like a lawyer stands up and says, "I
24	THE COURT: All right. Well, this record	24	object."
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1	is sealed.	1	And so, "What's your basis?"
2	Here is my position. I feel like I'm --	2	"Well, I'm not going to tell you what the
3	you know, I'm not really out in the light in terms of	3	basis is, but I object to this evidence."
4	what -- you know, what exactly it is you're saying.	4	MR. FLYNN: That is the paradox.
11:26 5	I feel like I'm in the dark on that, and until I have	11:29 5	THE COURT: Can you --
6	some solid statutory authority or something from the	6	MR. FLYNN: That is the paradox the Court
7	government or contact from the federal government,	7	is confronted with, and I will say this is where we
8	then I'm just going to go ahead and proceed because I	8	end up -- here's where we end up.
9	don't have a basis not to proceed.	9	There is no source code except in
11:27 10	MR. FLYNN: I understand, your Honor, and	11:29 10	Mr. Montgomery's head. It has always been that way
11	with all due respect to Mr. Peek, if I only gave you	11	by contract. You will hear his testimony. It always
12	half the story, which admittedly I've even given you	12	had to be that way.
13	less, because there is, as I said, a dichotomy	13	THE COURT: I've read that. I've read
14	between the data compression technology that these	14	that.
11:27 15	folks made a deal on and all this government stuff.	11:29 15	MR. FLYNN: There is no source code that
16	That's the bottom line to the proceeding	16	could be made to deliver to anyone, practically,
17	before you.	17	pragmatically, legally or otherwise.
18	Now, in all this government material, the	18	The bottom line for the Court is whether
19	way, as I understand it, on this level, the	19	the source code that's in Mr. Montgomery's head,
11:27 20	government works, the individuals involved, who have	20	which is what we're fighting about, because of the
21	been at eTreppid Technologies, would never contact	21	conversations that Mr. Montgomery and Mr. Trepp had
22	any U.S. Attorney and go into any court to disclose	22	financially in the fall of 2005, involving hundreds
23	anything or seek any order.	23	of millions of dollars, is the reason for -- that's
24	THE COURT: Well, they're out of luck,	24	the reason we're in court today.
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 1 That code, if you want to call it, that's
 2 in Mr. Montgomery's head, has nothing to do with the
 3 deal that was made between these people for data
 4 compression technology, which is all over the
 11:30 5 contracts.

6 THE COURT: I read that, too.
 7 MR. FLYNN: So where we're going to end up
 8 when Mr. Montgomery testifies, and I'll give the
 9 judge -- your Honor a heads up -- is there are
 11:30 10 thousands of lines of code involving this classified
 11 technology, notwithstanding what Mr. Peek says, that
 12 extremely few individuals in the government even know
 13 about.

14 Mr. Montgomery and Mr. Trepp have signed
 11:30 15 documents that they would never disclose it to
 16 anyone.

17 That's where we're going to end up, your
 18 Honor.

19 The only way the Court can understand the
 11:30 20 ramifications of this technology is for
 21 Mr. Montgomery to tell you, much of which Mr. Trepp
 22 doesn't even know, how it was used, what the results
 23 of that were over the last several years.

24 THE COURT: And you're saying he cannot
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 1 interesting to this filibuster is that we know that
 2 there were 200 gigabytes deleted off of the
 3 SRC SERVER, off the ISASERVER, and out of the RAID
 4 box, and he's saying, "Well, that doesn't" -- "That's
 11:32 5 meaningless. That's not a source code."

6 But you never hear him say or explain what
 7 it was that he did delete. We have this sort of
 8 inference, if you will, he's trying to put out
 9 there -- implication, if you will -- that there was
 11:32 10 something put on a program that automatically
 11 deleted, and we'll hear from that later, but --

12 THE COURT: I'm getting that part. I'm
 13 just -- I just have a concern about this security
 14 issue, that we're going to get to a point where
 11:32 15 there's going to be evidence or information that's
 16 critical to either side, and one side or the other is
 17 going to say, "I'm sorry, I can't tell you about
 18 that."

19 MR. PEEK: Well --
 11:32 20 THE COURT: All I'm saying is when that --
 21 MR. PEEK: -- then they fail on their
 22 burden.
 23 THE COURT: All I'm saying --
 24 Well, who has the burden?

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 1 tell me that?

2 MR. FLYNN: Absolutely cannot tell you
 3 that.

4 THE COURT: Why --

5 MR. FLYNN: And I believe the only thing
 6 that I can come up with is that he and Mr. Trepp
 7 could go into chambers, and Mr. Trepp could verify
 8 what Mr. Montgomery will tell you. I have no other
 9 way of --

10 MR. Peek: Your Honor, we're going to do
 11 this in open court.

12 THE COURT: You have a --

13 MR. PEEK: We're going to --

14 THE COURT: Well, we're going to do it
 11:31 15 where I say --

16 MR. PEEK: I understand that, your Honor,
 17 but I would like to have it done in open court, as
 18 opposed to just send two individuals into your
 19 chambers to discuss --

20 THE COURT: Well, we're not going to even
 21 do that if I don't have some statutory basis for his
 22 saying he can't or won't disclose it.

23 Give me that, and I'll say fine.

24 MR. PEEK: And, your Honor, what I find
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 1 All I'm saying is that if we get to that
 2 point, and I'm trying to give both sides a heads up,
 3 what I'm saying to you, Mr. Flynn, is if we get to
 4 that point and you or your client tell me that you
 11:32 5 cannot disclose that, without some citation to some
 6 authority for that purpose, I'm going to order it to
 7 be disclosed.

8 If it's not disclosed, I'm going to
 9 order -- I'm going to issue a show cause order with
 11:33 10 regard to contempt.

11 And I'll do the same on the other side.

12 I don't want to do that. I want to do the
 13 right thing. But you need to tell me what the right
 14 thing is and give me citation to some authority.

11:33 15 That's all I'm saying.

16 MR. FLYNN: I understand, your Honor, and
 17 I'm convinced at this point that the Court wants to
 18 do the right thing and --

19 THE COURT: That's what I get paid for.

11:33 20 Huge salary that I --

21 MR. FLYNN: And I don't know whether they
 22 intend to call Mr. Montgomery.

23 I think a lot will become clear when we
 24 call him, and you'll see when we reach a certain end

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1	point, it will become obvious.	1	Q. How would you explain the source code that
2	THE COURT: All right. Well, let's go	2	relates to that?
3	forward with it and then we'll see where we go with	3	A. Microsoft hired probably several hundred,
4	it.	4	maybe thousands to develop their Office applications,
11:33 5	I do have a Judges' meeting at noon so I	11:35 5	and they write all the actual text files that are
6	need to recess just a couple minutes early and I'll	6	eventually compiled to make this one executable
7	be back at 1:30, so just for planning purposes.	7	called Word.EXE, and that runs and it's got who knows
8	Go ahead, Mr. Flynn.	8	how many lines of code in it.
9	BY MR. FLYNN:	9	I heard that it's several hundred
11:33 10	Q. For two years, according to your	11:35 10	thousand, maybe a million just for Word because it's
11	testimony, you worked on about one percent of	11	a very, very -- what we call fat application, very
12	eTreppid source code?	12	feature-rich.
13	A. Correct.	13	Q. And are all those lines of code together
14	Q. And then after that, you were basically	14	referred to as the source code, then, for this Word
11:34 15	doing administrative, organizing duties?	11:35 15	application?
16	A. Purchasing, preparing stuff there, right.	16	A. Correct.
17	Q. So in all the years --	17	Q. So you'll have source code that is for an
18	You've been there six years, is it?	18	application that will have a whole lot of lines of
19	A. Correct.	19	code that all together form the source code for that
11:34 20	Q. You worked on one percent of the source	11:36 20	application?
21	code?	21	A. Correct, that are compiled and that
22	A. I can't tell you what percentage of all	22	creates the application.
23	the stuff.	23	Q. Okay. For each of the different
24	I just told you the two projects I've	24	applications that exist at eTreppid, there's then
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1	worked on.	1	source code that corresponds to that, correct?
2	Q. And whatever the Dennis Montgomery source	2	A. That's right.
3	code is on these government contracts, you don't know	3	Q. Now, are there different applications that
4	anything about it?	4	share source codes among them?
11:34 5	MR. PEEK: Counsel, could you please.	11:36 5	A. Several of those applications used video
6	Thank you.	6	compression Codecs.
7	THE WITNESS: I don't know about the code;	7	For example, they hard-coded the video
8	I just know about the hardware that was used for the	8	compression Codec into the player so that we could
9	projects.	9	ship this player to some of our clients that would
11:34 10	MR. FLYNN: Thank you, sir.	11:36 10	just be a stand-alone and it only played our type of
11	THE COURT: Are you finished?	11	media file, our type of video.
12	MR. FLYNN: Yes, sir. Thank you.	12	So, in that case, that Codec, that video
13	THE COURT: All right. Do you have any	13	compressor and the player had the same code in each
14	redirect?	14	of those two deals.
11:35 15	MR. JAKOPIN: Yes, a little bit, your	11:36 15	Q. So you can combine together different
16	Honor.	16	lines of source code, or the same lines of source
17		17	code for different applications?
18	REDIRECT EXAMINATION	18	A. That's right.
19	BY MR. JAKOPIN:	19	Q. Now, we've also heard about classified
11:35 20	Q. We've heard a lot about the source code,	11:37 20	information.
21	and so that we can make -- get some clarity to that,	21	Do you have an understanding of what's
22	Windows is an application -- or Word is an	22	different between classified information and source
23	application, it's a typing application, correct?	23	code --
24	A. Correct.	24	A. Yes.
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1 Q. -- as it was used at eTreppid?
 2 And what was that?
 3 A. As a facility security officer, I'm
 4 required to take courses from the government that
 5 trains me on what's classified, how the classified
 6 material is handled, who can handle the classified
 7 material, how to destroy it, all the things that are
 8 involved with classified material, how it's defined,
 9 everything, and I've taken these courses and gotten
 10 certificates for them.

11 Q. Are you aware of any of the eTreppid
 12 source codes being classified?

13 A. No.

14 Q. Okay. Are you aware of the different
 15 applications that are being worked on at eTreppid?

16 A. I know a lot of the different ones. I
 17 probably don't know all of them.

18 Q. What are the ones that you're aware of?

19 A. I mentioned the one before, the Adaptive
 20 Program which we've had pretty much from the start.

21 The data compressor, the video Codec
 22 programs, the audio Codec programs.

23 Codec is a word for a compressor,
 24 decompressor.

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1 stations and they had -- when they had something that
 2 was a working order on a version-by-version basis, it
 3 might be not every day, but every couple of days or
 4 every week, they would put that good build up on
 5 SRC SERVER.

6 Q. And so all of the source code that each of
 7 the different programmers worked on ultimately got
 8 stored on the SRC SERVER?

9 A. Right.

10 And each one of the programmers could give
 11 better details of which programs they worked on and
 12 which folders they put them on SRC SERVER.

13 I wasn't aware of what every particular
 14 one person was doing.

15 Q. Are you aware of eTreppid having backup
 16 CDs of source code?

17 A. I've been told over the years that Dennis
 18 had, on a regular basis, made DVDs and hard drives --
 19 maybe there was CDs in the beginning -- but gave them
 20 to Warren to put in a safe somewhere outside the
 21 building.

22 MR. FLYNN: Move to strike; lacks
 23 foundation. "I was aware." From what?

24 MR. JAKOPIN: Your Honor --

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1 Our streaming programs, our voice-over IP
 2 programs.

3 We've got hundreds of different
 4 applications.

5 Q. Are you aware of pattern recognition
 6 programs?

7 A. I don't know which programs do that.

8 Q. All right.

9 A. I couldn't give you a name of a program
 10 that did that.

11 Q. Are you -- do you have an understanding of
 12 where the source code for all of the different source
 13 code programs was stored?

14 MR. FLYNN: Strike -- objection, your
 15 Honor, to the word "all"; lacks foundation.

16 THE COURT: Define them a little bit
 17 more -- better than just "all."

18 BY MR. JAKOPIN:

19 Q. Let me ask it a different way.

20 Do you have an understanding of where the
 21 source code that different programmers wrote got
 22 stored?

23 A. All -- they stored all of their stuff on
 24 the SRC SERVER. They had local copies on their work

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1 THE COURT: Hold on just a minute.
 2 I'm not sure what the question was. I
 3 think you asked him did he know, and his answer was
 4 that he was aware.

5 I think you need to determine exactly how
 6 he was aware and then I'll decide whether to strike
 7 it or not.

8 BY MR. JAKOPIN:

9 Q. How were you aware that there were those
 10 CDs?

11 A. Dennis told me that he was making them.

12 THE COURT: Motion is denied.

13 MR. JAKOPIN: Thank you.

14 BY MR. JAKOPIN:

15 Q. Did you ever have an opportunity to look
 16 at those CDs?

17 A. Up until recently, no, and then --
 18 Do you want me to continue?

19 Q. Yes.

20 A. I forget what -- I believe the 10th or the
 21 11th of January, Warren brought me everything he said
 22 he had in the safe and had me look at it to see what
 23 it contained, and it was four hard drives and a stack
 24 of DVDs and CDs mixed.

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